133-346

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887

No. ~~992.~~ ~~652~~ 367

GEILINGER AND BLUM, A COMMERCIAL FIRM COMPOSED OF PAUL R. SULZER, L. REINHART, AND A. HAHN-LOSER; THE BANK IN WINTERTHUR, AND R. B. PLEASANTS, U. S. MARSHAL, PLAINTIFFS IN ERROR,

vs.

CAESAR PHILIPPI, SYNDIC OF THE INSOLVENT GILBERT H. GREEN, AND GILBERT H. GREEN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED AUGUST 8, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 992.

GEILINGER AND BLUM, A COMMERCIAL FIRM COMPOSED OF PAUL R. SULZER, L. REINHART, AND A. HAHNLOSER; THE BANK IN WINTERTHUR, AND R. B. PLEASANTS, U. S. MARSHAL, PLAINTIFFS IN ERROR,

vs.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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a *Transcript of Record.*

UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

GEILINGER & BLUM, THE BANK IN WINTERTHUR, and R. B. PLEASANTS, U. S. Marshal, Plaintiffs in Error,
vs.
CÆSAR PHILIPPI, Syndic, &c., and GILBERT H. GREEN, Defendants in Error.
} Nos. 11486 & 11487.

Farrar & Kruttschnitt, Esquires, for plaintiffs in error; Alfred Goldthwaite, Esquire, for defendants in error.

Writ of error returnable to the Supreme Court of the United States of America, at the city of Washington, on the second Monday of October, A. D. 1887.

1 *Third Opposition of Cæsar Philippi, Syndic. Filed May* 25, 1887.

Circuit Court of the United States, Eastern District of Louisiana.

BANK OF WINTERTHUR
vs.
GILBERT H. GREEN.
} No. 11486.

To the honorable the judges of the United States circuit court for the eastern district of Louisiana:

The petition and third opposition of Cæsar Philippi, syndic of the creditors of Gilbert H. Green individually and as a member of the late commercial firm and partnership of Gilbert H. Green & Co., of New Orleans, and also of Green, Stewart & Co., of Liverpool, England, respectfully represents that in a suit in the civil district court for the parish of Orleans, number 19734, entitled Gilbert H. Green *vs.* His Creditors, now pending in division E of said court, your petitioner was duly elected syndic of the creditors of said insolvent's estate, and was, on the 8th day of March, 1887, duly appointed and qualified as syndic of the said insolvent's estate. A duly certified copy of his letters as syndic will be produced on the trial of this third opposition. That the effect of said insolvency proceedings of Gilbert H. Green *vs.* His Creditors in the said
2 civil district court for the parish of Orleans was to vest the title and ownership of property of every kind belonging to Gilbert H. Green, the insolvent, in your petitioner, as syndic of the creditors of said insolvent's estate. Reference is made to the proceedings in the suit of Gilbert H. Green *vs.* His Creditors, No. 19734, in the civil district court, and a certified copy thereof will be produced on the trial of this opposition.

Now your petitioner shows that the said Gilbert H. Green, at the time of the said surrender of property and its acceptance by the court aforesaid, was the owner, as the master of the community of acquest and gains existing between him and his wife, Mrs. Anna Hunton Green, of certain real estate situate in the city of New Orleans and described as follows:

1. A certain lot or portion of ground situate in the fourth district of the city of New Orleans, in the square bounded by St. Charles avenue, Carondelet, Seventh, and Eighth streets, forming the corner of St. Charles avenue and Seventh street, and measuring ninety-five feet front on St. Charles avenue by a depth between equal and parallel lines of one hundred and twenty feet fronting on Seventh street.

2. Another lot or portion of ground, situate in the same district and square, adjoining the property above described in the rear, and measuring twenty feet or more, if more there be, front on Seventh street, commencing at a distance of one hundred and twenty feet from the corner of Seventh street and St. Charles avenue, by
3 one hundred and twenty-seven feet and two inches in depth between parallel lines, and being that part of a portion nearest to St. Charles avenue of a certain lot designated by the number eighteen on a particular plan, a sketch of which is annexed for reference to an act passed before W. J. Castell, N. P., on the 13th day of February, 1872, said two lots or portions of ground forming together a portion of ground measuring ninety-five feet front on St. Charles avenue by one hundred and forty feet and more, if more there be, in depth and front on Seventh street, one hundred and twenty feet in depth on the opposite side line towards Eighth street, at which depth the said portion of ground indents thirty-two feet and two inches on a line running parallel with St. Charles avenue towards Eighth street; thence it has a further depth of twenty feet or more, if more there be, to the rear line, on which it has a width of one hundred and twenty-seven feet and two inches, the whole as shown by a sketch annexed to an act of exchange between Simon Hernsheim and Mrs. Minerva Ann Scott, widow of the late Richard Flower, the said property having been acquired by purchase during the existence of the community in the name of Mrs. Anna Hunton, wife of said Gilbert H. Green, in act of date May 19th, 1882, before Theo. Guyol, N. P., recorded in C. O. B. 116, folio 293.

Your petitioner further shows that by and under an *alias* writ of *fieri facias* which was issued in the above-entitled cause the United States marshal for the eastern district of Louisiana, R. B. Pleasants,
4 did, on May 20th, 1887, seize the above-described property as the property of Gilbert H. Green, and will proceed to advertise and sell the same according to law as the property of said Gilbert H. Green unless prevented by process from this hon. court. Your petitioner shows that he is not a party to said suit of Bank of Winterthur *vs.* Gilbert H. Green; that he is the owner, as syndic of said insolvent's estate, of the above-described property, and that the said property is not subject to seizure in said suit, and that the same should be set aside and the said property be released.

Therefore petitioner prays that the Bank of Winterthur, through its attorneys, Mess. Farrar & Kruttschnitt, and R. B. Pleasants, United States marshal for the eastern district of Louisiana, be duly cited to answer this petition, and, after due proceedings, that the seizure of the property above described and fully set forth in the notice of seizure under the *alias* writ of *fieri* — in the above-entitled suit, dated May 20th, 1887, be set aside and the property released, and that the United States marshal, R. B. Pleasants, be restrained and enjoined from proceeding to advertise and sell the property herein claimed upon petitioner giving such bond, according to law, as this honorable court shall fix, the value of said property seized being ten thousand dollars and more; and prays for costs and general relief.

(Signed) T. J. SEMMES & LEGENDRE,
A. GOLDTHWAITE,
Attorneys for Third Opponent.

STATE OF LOUISIANA, *City of New Orleans:*

5 Personally came before me the undersigned authority, Cæsar Philippi, who, being first duly sworn, deposes and says that the facts and allegations of the foregoing petition are true and correct.

(Signed) CÆSAR PHILIPPI.

Sworn & subscribed to before me this 25th day of May, 1887.
[SEAL.] (Signed) OCTAVE MOREL,
Notary Public.

Order.

Let this petition and third opposition be filed, and let the injunction and restraining order issue as prayed for, the amount of the bond to be fixed on May 26th, 1887.

New Orleans, May 25, 1887.

(Signed) EDWARD C. BILLINGS, *Judge.*

Third Opposition of Cæsar Philippi, Syndic. Filed May 25th, 1887.

U. S. Circuit Court, Eastern District of Louisiana.

GEILINGER & BLUM
vs.
GILBERT H. GREEN. } No. 11487.

6 To the hon. the judges of the United States circuit court for the eastern district of Louisiana:

The petition and third opposition of Cæsar Philippi, syndic of the creditors of Gilbert H. Green, individually and as a member of the late commercial firm and partnership of Gilbert H. Green & Co., of New Orleans, and also of Green, Stewart & Co., of Liverpool, England, respectfully represents that in a suit in the civil district court

for the parish of Orleans, number 19734, entitled Gilbert H. Green *vs.* His Creditors, now pending in division E of said court, your petitioner was duly elected syndic of the creditors of said insolvent's estate, and was, on the 8th day of March, 1887, duly appointed and qualified as syndic of the said insolvent's estate. A duly certified copy of his letters as syndic will be produced on the trial of this third opposition.

That the effect of said insolvency proceedings of Gilbert H. Green *vs.* His Creditors in the said civil district court for the parish of Orleans was to vest the title and ownership of property of every kind belonging to Gilbert H. Green, the insolvent, in your petitioner, as syndic of the creditors of said insolvent's estate. Reference is made to the proceedings in the suit of Gilbert H. Green *vs.* His Creditors, No. 19734, in the civil district court, and a certified copy thereof will be produced on the trial of this opposition.

Now your petitioner shows that the said Gilbert H. Green, at the time of the said surrender of property and its acceptance by the court aforesaid, was the owner, as the master of the com-
7 munity of acquest and gains existing between him and his wife, Mrs. Anna Hunton Green, of certain real estate situate in the city of New Orleans and described as follows:

1. A certain lot or portion of ground situate in the fourth district of the city of New Orleans, in the square bounded by St. Charles avenue, Carondelet, Seventh, and Eighth streets, forming the corner of St. Charles avenue and Seventh streets and measuring ninety-five feet front on St. Charles avenue by a depth between equal and parallel lines of one hundred and twenty feet fronting on Seventh street.

2. Another lot or portion of ground, situate in the same district and square, adjoining the property above described in the rear, and measuring twenty feet or more, if more there be, front on Seventh street, commencing at a distance of one hundred and twenty feet from the corner of Seventh street and St. Charles avenue, by one hundred and twenty-seven feet and two inches in depth between parallel lines, and being that part of a portion nearest to St. Charles avenue of a certain lot designated by the number eighteen on a particular plan, a sketch of which is annexed for reference to an act passed before W. J. Castell, N. P., on the 13th day of February, 1872, said two lots or portions of ground forming together a portion of ground measuring ninety-five feet front on St. Charles avenue by one hundred and forty feet and more, if more there be, in depth and front on Seventh street, one hundred and twenty feet in depth on the opposite side line towards Eighth street, at which
8 depth the said portion of ground indents thirty-two feet and two inches on a line running parallel with St. Charles avenue towards Eighth street; thence it has a further depth of twenty feet or more, if more there be, to the rear line, on which it has a width of one hundred and twenty-seven feet and two inches, the whole as shown by a sketch annexed to an act of exchange between Simon Hernsheim and Mrs. Minerva Ann Scott, widow of the late Richard Flower, the said property having been acquired by purchase during

the existence of the community in the name of Mrs. Anna Hunton, wife of said Gilbert H. Green, in act of date May 19th, 1882, before Theo. Guyol, N. P., recorded in C. O. B. 116, folio 293.

Your petitioner further shows that by and under an *alias* writ of *fieri facias* which was issued in the above-entitled suit the United States marshal for the eastern district of Louisiana, R. B. Pleasants, did, on May 20th, 1887, seize the above-described property as the property of Gilbert H. Green and will proceed to advertise and sell the same according to law as the property of Gilbert H. Green unless prevented by process from this hon. court.

Your petitioner shows that he is not a party to said suit of Geilinger & Blum *vs.* Gilbert H. Green; that he is the owner, as the syndic of said insolvent's estate, of the above-described property, and that the said property is not subject to seizure in said suit, and that the same should be set aside and the said property be released.

Therefore petitioner prays that Geilinger & Blum, through
9 their attorneys, Mess. Farrar & Kruttschnitt, and R. B. Pleasants, United States marshal for the eastern district of Louisiana, be duly cited to appear and answer this petition, and, after due proceedings, that the seizure of the property above described and fully set forth in the notice of seizure under the *alias* writ of *fieri facias* in the above-entitled suit, dated May 20th, 1887, be set aside and the property released, and that R. B. Pleasants, United States marshal for the eastern district of Louisiana, be restrained and enjoined from proceeding to advertise and sell the property herein claimed upon petitioner giving such bond, according to law, as this hon. court shall fix and determine, the value of said property seized being in excess of ten thousand dollars; and prays for costs and general relief.

(Signed) T. J. SEMMES & LEGENDRE,
A. GOLDTHWAITE,
Attorneys for 3rd Opponent.

STATE OF LOUISIANA, *City of New Orleans:*

Personally appeared before me the undersigned authority, Cæsar Philippi, who, being first duly sworn, deposes and says that the facts and allegations of the foregoing petition are true and correct.

(Signed) CÆSAR PHILIPPI.

Sworn and subscribed to before me this 25th day of May, 1887.

[SEAL.] (Signed) OCTAVE MOREL,
Notary Public.

10 *Order.*

Let this petition and third opposition be filed, and let the injunction and restraining order issue as prayed for, the amount of the bond to be fixed on May 26th, 1887.

New Orleans, May 25, 1887.

(Signed) EDWARD C. BILLINGS, *Judge.*

Answer to Intervention and 3rd Opposition of C. Phillippi, Syndic.
Filed May 28, 1887.

United States Circuit Court, Eastern District of Louisiana.

BANK IN WINTERTHUR
vs.
GILBERT H. GREEN. } No. 11486.

Now come the defendants, and for answer to the intervention and third opposition of Cæsar Phillippi, syndic of the insolvent estate of Gilbert H. Green, they deny all and singular the allegations in plaintiff's petition contained.

These defendants admit that they have seized the property described in said petition, and that the same is advertised for
11 sale on the 25th day of June by R. B. Pleasants, United States marshal, under a writ of *fieri facias* issued in this cause. They admit that in the month of December, 1886, Gilbert H. Green made a surrender of his property to his creditors individually and as a member of the firm of Gilbert H. Green & Co. and Green, Stewart & Co., of Liverpool. They admit that Cæsar Phillippi was elected syndic, but these defendants specially deny that Gilbert H. Green ever surrendered or ever intended to surrender the property which has been seized in this suit, or that it has ever come into the custody or control of the said syndic or of the court which appointed him. These defendants aver that in his schedule of property surrendered the said Gilbert H. Green specially declared that he did not surrender the property seized in this cause, and then and there specially declared that the property belonged to his wife, and not to himself. Defendants aver that this surrender thus made by the said Green was accepted by the court, and that at a meeting of the creditors this surrender thus limited was also accepted by the creditors, and that said creditors voted to discharge the said Green absolutely from all further obligation to them.

Defendants further aver that Cæsar Phillippi, the syndic in this cause, never had any possession of the said property, and never intended to have any possession of the said property; that said property was in the possession of the said Green and his wife at the time of the seizure in this cause, and would have remained in their
12 possession free from any control or interference by the said Phillippi if it had not been for this seizure; that the said Green and his wife were actually negotiating to sell and dispose of said property at the time the seizure herein was levied, and they would have done this without let or hindrance from the said Phillippi, who has been moved to action in this matter entirely by the suggestion of the said Green, and merely for the purpose of vexing and harassing the defendants in this cause in the collection of their debt.

And, further answering, these defendants say that none of the foreign creditors of the said Green, to whom he owes nine-tenths

of his indebtedness, has ever accepted the surrender of the said Green, or that these defendants ever participated in the said proceedings, or that these defendants or any of his foreign creditors are in any shape, manner, or form bound by the proceedings in the said insolvency of Green.

Defendants further aver that the syndic in this cause represents only the Louisiana creditors, who are bound by the insolvency and bound by the surrender aforesaid, and that all these parties, having accepted Green's limited surrender as aforesaid and discharged him, are estopped and debarred from setting up any claim to the property seized in this cause specially excluded from said surrender.

And, assuming the position of plaintiff in reconvention, these defendants aver that they have been damaged by the injunction herein obtained in the full sum of one thousand dollars; that they have been compelled to employ counsel to defend this cause, and
13 that they are entitled on a dissolution of the injunction herein to recover from the said Cæsar Phillipi, syndic, and the surety on his injunction bond the sum of $1,000 as damages for this unlawful abuse of the writ of injunction.

Wherefore these defendants pray that the demand of the said Cæsar Phillipi, syndic, may be rejected with costs, and that the injunction herein issued may be dissolved, and that these defendants may have a judgment against said Phillipi in reconvention for one thousand dollars as damages and all costs.

And defendants pray for general and equitable relief.

(Signed) FARRAR & KRUTTSCHNITT, *Att'ys.*

Answer to Intervention and 3 Opposition of C. Phillippi, Syndic. Filed May 28, 1887.

United States Circuit Court, Eastern District of Louisiana.

GEILINGER & BLUM
vs.
GILBERT H. GREEN. } No. 11487.

Now come the defendants, and, for answer to the interven-
14 tion and third opposition of Cæsar Phillippi, syndic of the insolvent estate of Gilbert H. Green, they deny all and singular the allegations in plaintiff's petition contained.

These defendants admit that they have seized the property described in said petition, and that the same is advertised for sale on the 25th day of June by R. B. Pleasants, United States marshal, under a writ of *fieri facias* issued in this cause. They admit that in the month of December, 1886, Gilbert H. Green made a surrender of his property to his creditors individually and as a member of the firm of Gilbert H. Green & Co. and Green, Stewart & Co., of Liverpool. They admit that Cæsar Phillippi was elected syndic, but these defendants specially deny that Gilbert H. Green ever surrendered or ever intended to surrender the property which has been seized in this suit, or that it has ever come into the custody or control of the

said syndic or of the court which appointed him. These defendants aver that in his schedule of property surrendered the said Gilbert H. Green specially declared that he did not surrender the property seized in this cause, and then and there specially declared that the property belonged to his wife and not to himself. Defendants aver that this surrender thus made by the said Green was accepted by the court, and that at a meeting of the creditors this surrender thus limited was also accepted by the creditors, and that said creditors voted to discharge the said Green absolutely from all further obligation to them.

Defendants further aver that Cæsar Phillipi, the syndic in
15 this cause, never had any possession of the said property and never intended to have any possession of the said property; that said property was in the possession of the said Green and his wife at the time of the seizure in this cause, and would have remained in her possession free from any control or interference by the said Phillippi if it had not been for this seizure; that the said Green and his wife were actually negotiating to sell and dispose of said property at the time the seizure herein was levied, and that they would have done this without let or hindrance from the said Phillippi, who has been moved to action in this matter entirely by the suggestion of the said Green and merely for the purpose of vexing and harassing the defendants in this cause in the collection of the debt.

And, further answering, these defendants say that none of the foreign creditors of the said Green, to whom he owes nine-tenths of his indebtedness, has ever accepted the surrender of the said Green, or that these defendants ever participated in the said proceedings, or that these defendants or any of his foreign creditors are in any shape, manner, or form bound by the proceedings in the said insolvency of Green.

Defendants further aver that the syndic in this cause represents only the Louisiana creditors, who are bound by the insolvency and bound by the surrender aforesaid, and that all these parties, having accepted Green's limited surrender as aforesaid and discharged
16 him, are estopped and debarred from setting up any claim to the property seized in this cause specially excluded from said surrender.

And, assuming the position of plaintiff in reconvention, these defendants aver that they have been damaged by the injunction herein obtained in the full sum of one thousand dollars; that they have been compelled to employ counsel to defend this cause, and that they are entitled on a dissolution of the injunction herein to recover from the said Cæsar Phillippi, syndic, and the surety on his injunction bond the sum of $1,000 as damages for this unlawful abuse of the writ of injunction.

Wherefore these defendants pray that the demand of the said Cæsar Phillipi, syndic, may be rejected with costs, and that the injunction herein issued may be dissolved, and that these defendants may have a judgment against said Phillipi in reconvention for one thousand dollars as damages and all costs.

And defendants pray for general and equitable relief.
(Signed) FARRAR & KRUTTSCHNITT, *Att'ys.*

Bond for Injunction. Filed May 28, 1887.

UNITED STATES OF AMERICA:

17 Know all men by these presents that we, Cæsar Philippi, syndic of the creditors of Gilbert H. Green, individually and as a member of the commercial firm and partnership of Gilbert H. Green & Co. and Green, Stewart & Co., and H. A. Fredericks, are held and firmly bound, jointly and severally, unto Bank of Winterthur in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Bank of Winterthur, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 28th day of May, in the year of our Lord eighteen hundred and eighty-seven.

Whereas Cæsar Philippi, syndic as aforesaid, has this day presented a petition to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of injunction against R. B. Pleasant, United States marshal for the eastern district of Louisiana, in the suit of Bank of Winterthur *vs.* Gilbert H. Green, No. 11486 on the docket of the U. S. circuit court:

Now, the condition of the above obligation is that we, the above-bounden Cæsar Philippi, syndic, &c., and H. A. Fredericks, will well and truly pay to the said Bank of Winterthur, the defendant in said petition, all such damages as it may recover against us in case it should be decided that the said injunction was wrongfully obtained and the opposition be wrongfully made.

18 Signed, sealed, and delivered in the presence of—
(Signed) CÆSAR PHILIPPI. [SEAL.]
H. A. FREDERIC. [SEAL.]

Bond approved.
May 28, 1887.
(Signed) EDWARD C. BILLINGS, *Judge.*

Bond for Injunction. Filed May 28, 1887.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Cæsar Philippi, syndic of the creditors of Gilbert H. Green, individually and as a member of the commercial firm of Gilbert H. Green & Co. and of Green, Stewart & Co., and H. A. Fredericks, are held and firmly bound, jointly and severally, unto Geilinger & Blum in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said Geilinger & Blum, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we

bind ourselves and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the 28th day of May, in the year of our Lord eighteen hundred and eighty-seven.

Whereas Cæsar Philippi, syndic as aforesaid, has this day presented a petition to the honorable the circuit court of the United
19 States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, praying for a writ of injunction against R. B. Pleasant, United States marshal for the eastern district of Louisiana, in the suit of Geilinger & Blum *vs.* Gilbert H. Green, No. 11487 on the docket of the U. S. circuit court:

Now, the condition of the above obligation is that we, the above-bounden Cæsar Philippi, syndic, &c., and H. A. Frederick, will well and truly pay to the said Geilinger & Blum, the defendants in said petition, all such damages as they may recover against us in case it should be decided that the said injunction was wrongfully obtained and the opposition be wrongfully made.

Signed, sealed, and delivered in the presence of—

(Signed) CÆSAR PHILIPPI. [SEAL.]
H. A. FREDERICK. [SEAL.]

Bond approved.
May 28, 1887.
(Signed) EDWARD C. BILLINGS, *Judge.*

Agreement to Consolidate and to Waive Trial by Jury.

U. S. Circuit Court, E. Dist. of La.

BANK IN WINTERTHUR
vs.
GILBERT H. GREEN. } No. 11486.

Intervention and 3 opposition of C. Philippi, syndic.

20 GEILINGER & BLUM
vs.
GILBERT H. GREEN. } No. 11487.

Intervention & 3d opposition of C. Philippi, syndic.

It is hereby agreed that these two causes shall be consolidated on the intervention and 3d opposition of C. Philippi, syndic, and tried as one cause; it is further agreed that trial by jury is waived and the cause submitted to the court with the request that the court make a special finding of the facts.

June 9, '87.
(Signed) FARRAR & KRUTTSCHNITT, *Att'ys.*
T. J. SEMMES & LEGENDRE,
A. GOLDTHWAITE,
Att'ys for Syndic.

Bill of Exceptions. Filed June 13, 1887.

United States Circuit Court, Eastern District of Louisiana.

21 BANK IN WINTERTHUR *vs.* GILBERT H. GREEN. } No. 11486.

Intervention and third opposition of Cæsar Phillipi, syndic.

GEILINGER & BLUM *vs.* GILBERT H. GREEN. } No. 11487.

Intervention and third opposition of Cæsar Phillipi, syndic.

Consolidated causes.

Be it remembered that on the trial of this cause before the court, the parties having waived in writing trial by jury and having submitted the cause to the court upon the issues of law and the issues of fact, the plaintiffs, Geilinger & Blum and the Bank in Winterthur, placed Gilbert H. Green upon the witness stand and offered to prove by the said Gilbert H. Green that in making the surrender of his property, as set forth in the record No. 19734, division E, civil district court, referred to in the statement of facts in this cause, he did not intend to include in that surrender the property seized in this cause for the reason that he was informed and advised by his counsel that the said property was the property of his wife and was not liable for his debts or covered by the said surrender; to the introduction of which testimony the said Cæsar Phillipi, syndic, then and there objected on the ground that the said testimony was
22 irrelevant and that Green's intention in making his surrender would not affect the issue in this cause; which objections the court sustained, and refused to allow said testimony to be adduced.

To which ruling of the court the said plaintiffs, Geilinger & Blum and the Bank in Winterthur, then and there excepted, and in witness whereof tender this their formal bill of exceptions to be signed.

June 13th, 1887.

(Signed) DON A. PARDEE, *Judge.*

Finding of Fact and Judgment. Entered and Filed 13 *June*, 1887.

United States Circuit Court, Eastern District of Louisiana.

BANK IN WINTERTHUR
vs.
GILBERT H. GREEN. } No. 11486.

Intervention and third opposition of Cæsar Phillipi, syndic.

23 GEILINGER & BLUM
vs.
GILBERT H. GREEN. } No. 11487.

Intervention and third opposition of Cæsar Phillipi, syndic.

Consolidated causes.

This cause came on this day for trial, and the parties having filed a stipulation in writing waiving the intervention of a jury and submitting the cause to the court on the issues of law and of fact with the request that the court do make a special finding of the facts—

Whereupon the court makes the following finding of fact:

Geilinger & Blum, a commercial firm, domiciled and doing business at Winterthur, in Switzerland, filed their action against the defendant, Gilbert H. Green, on November 25th, 1886, and on the 31st day of January, 1887, recovered a verdict and judgment in this court against Gilbert H. Green for the sum of ten thousand five hundred and nine $\frac{68}{100}$ dollars, with interest. The Bank in Winterthur, a corporation organized under the laws of the Canton of Zurich, in the Swiss Republic, filed its action against Gilbert H. Green on the 25th day of November, 1886, and on the 31st day of January, 1887, recovered a verdict and judgment in this court against Gilbert H. Green for the sum of forty thousand three hundred and six $\frac{64}{100}$ dollars, with interest. On December 26th, 1886, Gilbert H. Green made a surrender under the insolvent law of the State of
24 Louisiana, individually and as a member of the commercial copartnership of Gilbert H. Green & Company, of New Orleans, Green, Stewart & Co., of Liverpool, England, in the form and manner set forth in the certified copy of the record of said insolvent proceedings, No. 19734 of the docket of the civil district court, parish of Orleans, which said record is made part of the finding of facts in this cause to show the character and contents of the proceedings had in said cause; that on or about the 20th of May, 1887, under writs of *alias fi. fa.* issued in the case of Geilinger & Blum *vs.* Gilbert H. Green and in the case of the Bank in Winterthur *vs.* Gilbert H. Green, the marshal of this court levied upon certain real estate described in the petition of Cæsar Phillipi, syndic. This property was acquired by act before Theodore Guyol, notary public, of date May 19th, 1882, and said deed is hereto annexed and made part of this

statement of facts to show the form, purport, and contents thereof. At the time that this levy was made the said property was in possession of Gilbert H. Green and his wife and was their matrimonial domicile, and the said property had been continuously in possession of the said Green and wife from the date of the purchase thereof down to the date of the seizure thereof under writs of *fi. fa.* in these causes. Up to the time that this seizure was made no demand had been made upon Green and wife by Cæsar Phillipi, syndic, for the said property, and no claim of title or possession had been set up by the said Phillipi, syndic, for the said property.

And thereupon the court, upon these facts, finds the issues of law in favor of the said Cæsar Phillipi, syndic, and it is there-
25 upon ordered, adjudged, and decreed that the seizure of the said property above described under the *alias* writ of *fi. fa.* issued in these causes, dated May 20th, 1887, be set aside and the property released by the marshal, and that R. B. Pleasants, United States marshal for the eastern district of Louisiana, be restrained and enjoined from proceeding to advertise and sell the property herein claimed, upon this condition, however, that said Phillipi shall pay all the costs which have been incurred in the making of said seizure, and shall also present and file in this cause an order from the civil district court for the parish of Orleans, division E, authorizing and directing him to take possession of said property from the said Green and wife, and to administer the same as part of the insolvent estate of the said Gilbert H. Green committed to the charge of the said court and the said syndic.

It is further ordered, adjudged, and decreed that Geilinger & Blum and the Bank in Winterthur be condemned jointly to pay the costs of this suit.

Judgment rendered June 13, 1887.

Judgment signed June 17, 1887.

(Signed) DON A. PARDEE, *Judge.*

Transcript referred to in the finding of facts:

26 *Petition of Insolvency. Filed Dec'r 24th*, 1886.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Div. "E."

GILBERT H. GREEN
vs.
HIS CREDITORS and the CREDITORS OF GILBERT H. GREEN & Co. and GREEN, STEWART & Co. } No. 19734.

To the honorable the civil district court for the parish of Orleans:

The petition of Gilbert H. Green, who resides in the city of New Orleans and who was a member of the commercial firm and partnership of Gilbert H. Green, Green & Co., of New Orleans, and also

of Green, Stewart & Co., of Liverpool, England, both of which firms are now dissolved, respectfully shows:

That in consequence of losses in business, shrinkage in value of assets, and failures of debtors your petitioner has become insolvent and is obliged to make a surrender of his property to his creditors.

He files herewith and annexes hereto as part of this petition Schedules "A," "B," and "C," showing a statement of his affairs, a list of the creditors of the said firm of Gilbert H. Green & Co., and a
27 statement of the assets of said firm and all his property, rights, and actions.

Your petitioner states — James Stewart, the partner in the firm of Green, Stewart & Co., of Liverpool, and the controlling manager of that firm, has gone into bankruptcy in England, as petitioner is informed, and surrendered to the bankrupt court the assets of that firm, and petitioner has no control over the same.

Petitioner also files herewith a statement of the creditors of Green, Stewart & Co., made in March, 1886, and forwarded to him by an accountant through James Stewart.

The said statement is filed for reference and marked "D."

Petitioner is unable to verify the same by oath. He states that the names of the creditors set forth in this statement do not appear in petitioner's schedule marked "B."

Petitioner prays this honorable court to accept the cession of his property for the benefit of his creditors and the creditors of said firm, and to order a stay of all legal proceedings against his person and property, and to order a meeting of creditors before Notary Public Nicholas B. Trist according to law.

He further prays for an attorney to be appointed to represent the absent creditors and for all proper orders in the premises, and, after all due proceedings, that he be discharged from his debts and liabilities as a member of said firm and individually.

And he prays for general relief.

(Signed) A. GOLDTHWAITE,
Att'y for Petitioner.

28 SCHEDULE "A," annexed to and made part of the foregoing petition. Filed Dec'r 24th, 1884.

List of the Assets of Gilbert H. Green & Co., of New Orleans.

Assets:

Cash in hand	$2,046 49
Considered good:	
Jose Serra y Font, Barcelona, Spain	164 25
Suspense account:	
Amounts due V. Marti, $100; E. H. Lombard, $50	150 00

Bills receivable:

W. V. R. Watson, Houston, Texas		809 92
B. T. Hatcher, Columbus, Georgia, balance due to Green, Stewart & Co., Liverpool, £1,697 15 1		8,149 22
Office furniture		75 00
Claims on interior purchases, being claims on Hazard & Co., Bondies, Simpson & Co., claimed by them to be a contingent liability		1,823 01
Gilbert H. Green's & James Stewart's interest (say 24% & 15%) in stave-yard belonging to Charles & Gilbert Green & Co., in liquidation, situated between Levee, Soraparu, First, & Water streets, New Orleans, valued at $900; 39%		351 00
Am't carried forward		$13,568 89
29 Am't brought forward		$13,568 89

Considered bad:

Daffin & Dresser, Savannah, Georgia	7,557 89
C. H. Chase & Co., New Orleans	757 17
A. Carriere & Sons	13,462 88
J. H. Blake & Co., Galveston, Texas	2,585 85
Three shares Southern Lith'a Co.	300 00
E. L. Carriere	1,543 82

Suspense ac.:

Amount due by Henry Fontanie	150 00
A. Ortenbach, amount appropriated by him while in the employ of G. H. Green & Co., as cashier & book-keeper, without their knowledge or consent	8,436 30

Bills receivable considered worthless:

E. L. Carriere	8,900 00	
L. P. Rouquette	450 00	
E. Morphy	294 67	
		9,644 67
		$58,007 47

In vacating the office and moving papers the notes of Rouquette & Morphy have been mislaid.

(Signed) GILBERT H. GREEN.

Of cash belonging to the firm I have retained $250.00 to defray legal expenses connected with putting the pet'r into insolvency.

(Signed) GILBERT H. GREEN.

30 SCHEDULE "B," annexed to and made part of the foregoing Petition. Filed Dec'r 24, 1886.

Schedule "B" of the Debts and Liabilities of Gilbert H. Green & Co.

Liabilities:

Estate of Charles Green	$4,712 92
Louis Reinhart, Havre, fcs. 673,4.40	1,278 85
Lathano & Co., " "	2,472 55
Gerlinger & Blum, Winterthur, fcs. 6,225,1.04	12,382 70
Andre, Girod & Co., Paris, fcs. 17,4950. " "	33,938 97
Marcuard, Krauss & Co., Paris, fcs. 18,4464.85	34,871 82
Bank in Winterthur, Winterthur, fcs. 20023950	38,360 62
Kuster & Co., Amsterdam, £15 19 8	76 76
Theo. Möller, Hamburg, R. M., 61.50	14 15
L. Eichrodt, Bremen, £96 0 3	463 67
F. W. Burchard, Hamburg, R. M., 33570	80 57
J & W. Seligman & Co., New York	14,572 71
Lazard Freres, " "	979 23
Kidder, Peabody & Co., " "	4,976 55
Bank of Montreal, " "	2,294 72
Seignouret Freres, Bordeaux, fcs. 13788	2,703 54
Citizens' Bank of La., New Orleans	10,701 55
State National Bank, " "	12,577 28
W. F. Halsey, " "	3,720 25
Various city creditors, as per list attached, marked "B" continued	4,521 86
	185,701 27
Amount claimed by tax collector, tax on money loaned, $15,000.00	120 00

(Signed) GILBERT H. GREEN.

31 List of city creditors:

Jules Mazerat & Bro.,	New Orleans	632 00
Marshall J. Smith & Co.,	"	1,660 42
Hope Insurance Co.,	"	22 95
Sun Mutual Ins. Co.,	"	7 50
M. H. Nestler,	"	351 06
New Orleans Ins. Co.,	"	19 13
H. W. Turner,	"	85 00
J. O. Bigelow,	"	120 10
J. H. Duggan,	"	381 90
N. O. Cotton-Press Association,	"	584 50
Commercial cotton press,	"	110 50
Proceeds of one bale of cotton		33 06

H. Charnock,	New Orleans	15 82
Centennial cotton press,	"	23 00
Morris Express Co.,	"	75 00
Garcia & Fauche,	"	23 50
James Buckley & Co.,	"	9 00
B. D. Wood & Bro.,	"	5 00
M. F. Dunn & Bro.,	"	23 15
Minor & Westcoat,	"	36 70
L. Eichler,	"	10 45
N. O. Cotton Exchange,	"	49 24
Ross, Keen & Co.,	"	238 23
S. W. Rawlins,	"	40 65
		$4,521 86

(Signed) GILBERT H. GREEN.

32 SCHEDULE "C," annexed to and made part of the foregoing petition. Filed Dec'r 24th, 1886.

Schedule "C" of the Liabilities and Assets of Gilbert H. Green Individually and Apart from the Firm of Gilbert H. Green & Co.

Liabilities, none; assets, value unknown.
125 shares N. O. Smelting & Gas Co.
2,215 " Ormus Gold and Silver Mining Co.
123 " Indus Mining Co.
One-half pew No. 59, 1st Presbyterian Church, New Orleans.
(Signed) GILBERT H. GREEN.

NOTE.—The following stocks, bonds, etc., personal property of Gilbert H. Green, were pledged by him for account of Gilbert H. Green & Co. and cost him as follows:

30	shares	Texas & Continental Trans. Co.	cost	$1,800 00
10	"	Shell Beach R. R.	"	1,000 00
360	"	Citizens' Bank of La.	"	40,800 00
6	"	Sibley Manuf'g Co., Augusta	"	480 00
13	"	Hydraulic Press Co., Savannah	"	1,625 00
		Am't carried forward		$45,705 00

33

	Am't brought forward		$45,705 00
18	shares Savannah B'k and Trust, cost		1,440 00
33	shares Houston Gas-Light Co., @ 80		2,640 00
105	" Eagle & Phœnix Man'f'g Co., Columbus, *Co.*, cost *cost*		14,700 00
1	" Barbour Co., Ala., bond, cost		1,000 00
New Orleans Claret Manufacturing Co., being a transaction undertaken for the personal ac. of Emile Carriere, 900 casks of wine, representing			18,611 91
			$84,096 91

All of the above individual property of Gilbert H. Green was wholly absorbed in the business of the firm of Gilbert H. Green & Co. and lost to him.

The house in which I reside on St. Charles street and the furniture therein is the individual property of my wife and I have no claim thereto.

(Signed) GILBERT H. GREEN.

SCHEDULE MARKED "D," annexed to and made part of the foregoing petition. Filed Dec'r 24th, 1886.

34 *Statement "D."*

Creditors on open account, partly secured.

44, Eason Barry & Co., Stimford St., Liverpool			2,677 11 10
Holding—			
302 bales cotton, ex "Alicia," est'd @		2,400	
45, J. B. Clarke & Co., 16 Chapel St., Liverpool			4,134 14 1
Holding—			
271 bales cotton, p. "Pedio" (bal'ce of proceeds)	4,080		
447 bales cotton, p. "Pedio" (bal'ce of proceeds)	4		
		4,084	
A. Hannan & Co., ex Halkins, acy., Liverpool			1,620 11 8
Holding—			
Bal'ce proceeds 18 bales cotton, Francisca, bal'ce proceeds 18 bales River Indus	1,440		
Bank of Liverpool, Water St., Liverpool, bal'ce of No. 1 advance ac.	637.3		
" No. 2 " "	2,070.9.1		
			2,707 12 1
Holding—			
36 bales cotton, p. "Puertonquerie," est'd @	360		
50 bales cotton, p. "Favonid," est'd @	1,200		
42 " " p. Persian, " "	920		
		2,480	
		10,404	11,140 9 8

35 Creditors on open account, unsecured.

Seville & Co., 12 Tithebarn street, Liverpool	67	4	3
W. Wilson, Ales	24	6	1
Anchor Spinning Co'y, Oldham	8	16	8
Taylor, Gair & Warburton, Brown's buildings, Liverpool	23	1	1
Brancker, Boxwell & Co., Exchange alley, Liverpool	152	1	9
George Knowles & Son	1	6	8
William Dean & Co., 9 Red Cross, Liverpool, ab't	300		
	576	16	6

Affidavit Annexed to Schedules.

STATE OF LOUISIANA, *City of New Orleans:*

I, Gilbert H. Green, do solemnly swear that the within and above schedules, "A" and "C," contain a correct and faithful statement of all the property I possess, either in movables or immovables or in other rights or claims, except, however, those articles which the law authorizes me to keep.

And I do further swear that the schedule marked "B" contains a correct and faithful statement of my active and passive debts and of the losses I have experienced in my affairs, and that I have, neither directly nor indirectly, diverted any of my property to the injury of my creditors, so help me God.

And I do further swear that the statement "D" is true and
36 correct to the best of my knowledge and belief.

(Signed) GILBERT H. GREEN.

Sworn to and subscribed before me this 24th of December, 1886.

(Signed) W. T. HOUSTON, *Judge.*

Affidavit Annexed to Petition.

STATE OF LOUISIANA, *City of New Orleans:*

I, Gilbert H. Green, do solemnly swear that the facts and allegations of the foregoing petition are true, and, further, that the annexed schedule contains a correct and faithful statement of all the property I possess, either in movables or immovables or in other rights or claims, except, however, those articles which the law authorizes me to keep.

And I do further solemnly swear that the schedule contains a correct and faithful statement of my active and passive debts and of the losses I have experienced in my affairs, and that I have, neither directly nor indirectly, diverted any of my property to the injury of my creditors, so help me God.

(Signed) GILBERT H. GREEN.

Sworn to and subscribed before me this 24th day of December, 1886.

(Signed) W. T. HOUSTON, *Judge.*

37 *Order of Court.*

Let the cession of property of petitioner, Gilbert H. Green, individually and as a member of the late commercial firm and partnership of Gilbert H. Green & Co., of New Orleans, and also of Green, Stewart & Co., of Liverpool, England, be, and the same is hereby, accepted by the court for the benefit of his creditors, and it is ordered that a meeting of said creditors be held and convened before Nicholas B. Trist, notary public, in this city, on Saturday, the 29th day of January, 1887, at 11 o'clock a. m., for the purpose of deliberating upon the affairs of said petitioner, to elect a syndic, and vote upon all other matters that may be brought before them, and in the meantime all judicial proceedings against the person as well as the property of said petitioner are stayed, and let J. B. Guthrie, Esq., attorney-at-law, be appointed to represent the absent creditors herein.

New Orleans, December 24th, 1886.

(Signed) HENRY L. LAZARUS, *Judge.*

Notice of Appointment of Attorney for Absent Creditors.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "E."

GILBERT H. GREEN *vs.* HIS CREDITORS, etc. } No. 19734.

38 To James B. Guthrie, attorney and counselor at law, N. O.

SIR: Please to take notice that you have been appointed by this court attorney to represent the absent creditors herein.

New Orleans, December 27th, 1886.

[L. S.] (Signed) JAS. D. RANKIN, *Deputy Clerk.*

Sheriff's Return on Notice. Filed Dec'r 27th, 1886.

Rec'd Dec'r 28th, 1886. Dec'r 28th, 1886, I served a copy of the within notice of appointment personally on James B. Guthrie, attorney herein named; ret. same day.

(Signed) P. A. McINTYRE, *D'p'y Sheriff.*

Process Verbal (Copy) of Meeting of Creditors. Filed May 14th, 1887.

STATE OF LOUISIANA, *Parish of Orleans, City of New Orleans:*

Be it known that on this twenty-ninth day of January, in the year one thousand eight hundred and eighty-seven, by virtue of and in conformity with an order of the honorable the civil district

court for the parish of Orleans, rendered on the 24th day
39 of December, 1886, in the suit of Gilbert H. Green *vs.* His Creditors and the Creditors of Gilbert H. Green & Co. and Green, Stewart & Co., No. 19734 of the docket of said court, in the petition of said Gilbert H. Green, who makes a cession of property and prays that a meeting of his creditors and of the creditors of the above-named firms be held to take into consideration the subject-matter of said petition and for all necessary orders in the premises.

Whereupon the said court has ordered that the cession of the property of Gilbert Green, individually and as a member of the late firms of Gilbert H. Green & Co., of New Orleans, and of Green, Stewart & Co. of Liverpool, England, be accepted for the benefit of his creditors; that a meeting of said creditors be held and convened before the hereinafter named and undersigned notary public on the 29th day of January, 1887, at 11 o'clock a. m., for the purpose of deliberating upon the affairs of said petitioner, to elect a syndic, and vote upon all other matters that may be brought before them; that all judicial proceedings against him and his property be stayed, and that J. B. Guthrie, Esq., be appointed to represent the absent creditors; all of which will more fully appear, reference being had to the hereunto annexed duly certified copy of said petition and order of court thereon.

In my office and before me, Nicholas Browse Trist, a notary public, duly commissioned and qualified, in and for the parish and State aforesaid, personally came and appeared, at the hour of eleven a. m.,
Gilbert H. Green, who declared that, owing to the reasons
40 set forth in his petition to the court, he finds himself obliged to surrender his property and sue his creditors and those of the firm of Gilbert H. Green & Co. and Green, Stewart & Co. for his release and discharge.

Wherefore he does, by these presents, respectfully solicit the said creditors to accept the surrender of said property, to grant him a discharge, individually and as a member of said firms, to elect a syndic to take charge of said ceded property, and generally to do all other things necessary or requisite in or about the premises by virtue and in pursuance of said order of court.

In faith whereof he has signed his name in the presence of the undersigned competent witnesses and me, notary.

(Original signed) GILBERT H. GREEN.
N. B. TRIST, *Not. Pub.*

JNO. DEMAREST.
AMBROSE SMITH.

Also appeared before me and assembled in meeting the hereinafter-named creditors, who, after taking cognizance of said petition, order of court thereon, and annexed schedule, did severally declare as follows:

Hugh Dunbar Hopkins, herein acting in his capacity of secretary & treasurer of the "New Orleans Cotton Press Association," who, being by me first duly sworn, says that said association is the creditor of Gilbert H. Green & Co. in the sum of five hundred and forty-

nine $\frac{50}{100}$ dollars for charges on cotton shipped for their account; that the same is justly and lawfully due; that he grants a
41 discharge to the insolvent, and that he votes for Cæsar A. Phillippi as syndic.

(Original signed) H. D. HOPKINS,
Sec't'y and Treas.
N. B. TRIST, *Not. Pub.*

Joseph H. Duggan, being by me first duly sworn, says that he is a creditor of Gilbert H. Green & Co. in the sum — three hundred and eighty-one $\frac{90}{100}$ dollars, being for brokerage and inspection of cotton-seed oil; that the same is justly and lawfully due; that he accepts the surrender of property, grants a full discharge to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) J. H. DUGGAN.
N. B. TRIST, *Not. Pub.*

Wm. P. Ross, a member of the firm of Ross, Keen & Co., of this city, who, being by me first duly sworn, says that his said firm is a creditor of the firm of Gilbert H. Green & Co. in the sum of two hundred and thirty-eight $\frac{23}{100}$ dollars, being for freight difference; that the same is justly and lawfully due; that he accepts the surrender of property, grants the insolvent a full discharge, and votes for Cæsar A. Phillippi for syndic.

(Signed) WM. P. ROSS.
N. B. TRIST, *Not. Pub.*

John O. Bigelow, of this city, who, being by me first duly sworn, says that he is a creditor of the firm of Gilbert H. Green & Co. in the sum of one hundred and twenty $\frac{10}{100}$ dollars, being
42 for commissions due; that the same is justly and lawfully due; that he accepts the surrender of property, grants a full discharge to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) J. A. BIGELOW.
N. B. TRIST, *Not. Pub.*

Jules Mazerat, a member of the firm of Jules Mazerat & Bros., who being by me first duly sworn, says that his said firm is a creditor of the firm of Gilbert H. Green & Co. in the sum of six hundred and thirty-two dollars, being for brokerage; that the same is justly and lawfully due; that he accepts the surrender of property, grants a full discharge to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) JULES MAZERAT.
N. B. TRIST, *Not. Pub.*

James Buckley, being duly sworn, says he is a member of the firm of Buckley & Co., of this city; that said firm is the creditor of the firm of Gilbert H. Green & Co. in the sum of nine dollars; that the same is justly and lawfully due; that he accepts the surrender,

grants a full discharge to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) JAMES BUCKLEY.
N. B. TRIST, *Not. Pub.*

Horatio W. Turner, being duly sworn, says that he is a creditor of the firm of Gilbert H. Green & Co. in the sum of fifteen $\frac{17}{100}$ dollars; that the same is justly and lawfully due; that he accepts the surrender of property, grants a full discharge to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) HORATIO W. TURNER.
N. B. TRIST, *Not. Pub.*

43 James J. Tarleton, being duly sworn, says he is the cashier of the Citizens' Bank of Louisiana; that said bank is the creditor of Gilbert H. Green & Co. in the sum of twelve thousand eight hundred and eleven $\frac{15}{100}$ dollars; that the same is justly and lawfully due; that said bank accepts the surrender of property, grants a full discharge to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) JAS. J. TARLETON, *Cashier.*
N. B. TRIST, *Not. Pub.*

And it being now the hour of five p. m. and impossible to receive the votes of all the creditors this day, I, said notary, adjourned the present meeting to Monday, January 31st, 1887, at the hour of ten a. m., and have signed the process verbal of this day's proceeding, together with said two witnesses.

(Signed) N. B. TRIST,
Not. Pub.

JNO. DEMAREST.
AMBROSE SMITH.

On this thirty-first day of January, 1887, in my office and before me, the undersigned notary, personally came and appeared the following-named creditors of the insolvent, who declared as follows:

Martin H. Nestler, who, being by me, notary, first duly sworn, declared that he is the agent in this city of the Morris Express Company; that in his said capacity he is the creditor of the firm of Gilbert H. Green & Co.; that said indebtedness amounts to
44 seventy-five dollars; that the same is justly and lawfully due; that he accepts the surrender of property, grants a full discharge to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) MARTIN H. NESTLER.
N. B. TRIST, *Not. Pub.*

Martin H. Nestler, being duly sworn, says that he is a creditor of said Gilbert H. Green & Co. in the sum of three hundred and fifty-one $\frac{6}{100}$ dollars; that the same is justly and lawfully due; that he

accepts the surrender of property, grants a full discharge to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) MARTIN H. NESTLER.
N. B. TRIST, *Not. Pub.*

Ferdinand Goldsmith, a member of the firm of Smith & Goldsmith, who, being by me first duly sworn, says that his said firm is a creditor of the firm of Gilbert H. Green & Co. in the sum of one hundred and forty-three $\frac{56}{100}$ dollars; that the same is justly and lawfully due; that he accepts the surrender of property, grants a full discharge to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) FERD. GOLDSMITH.
N. B. TRIST, *Not. Pub.*

Michael F. Dunn, a member of the firm of M. F. Dunn & Bro., who, being by me first duly sworn, says that his firm is a creditor of the firm of Gilbert H. Green & Co. in the sum of twenty-three $\frac{15}{100}$ dollars; that the same is justly and lawfully due; that he
45 accepts the surrender of property, grants a full discharge and release to the insolvent, and votes for Cæsar A. Phillippi for syndic.

(Signed) M. F. DUNN.
N. B. TRIST, *Not. Pub.*

And it being now the hour of five p. m. and impossible to receive the votes of all the creditors this day, I, said notary, adjourned the present meeting to to-morrow, February 1st, 1887, at the hour of ten a. m., and have signed the process verbal of this day's proceedings, together with said two witnesses.

(Signed) N. B. TRIST,
Not. Pub.

JNO. DEMAREST.
AMBROSE SMITH.

And no creditor appearing on this first day of February, 1887, I, said notary, adjourned the present meeting to to-morrow, February 2d, 1887, at the hour of ten a. m., and have signed with said two witnesses.

(Signed) N. B. TRIST,
Not. Pub.

JNO. DEMAREST.
AMBROSE SMITH.

And no creditor appearing on this second day of February, 1887, I, said notary, adjourned the present meeting to the next day, February 3d, 1887, at the hour of ten a. m., and have signed with said two witnesses.

(Signed) N. B. TRIST,
Not. Pub.

JNO. DEMAREST.
AMBROSE SMITH.

46 And no creditor appearing on this third day of February, 1887, I, said notary, adjourned the present meeting to the next day, February 4th, 1887, and have signed with said two witnesses.

(Signed) N. B. TRIST,
Not. Pub.

JNO. DEMAREST.
AMBROSE SMITH.

On this fourth day of February, 1887, in my office and before me, the undersigned notary, personally came and appeared the following-named creditors of the insolvent, who declared as follows:

Marshall J. Smith, a member of the firm of Marshall J. Smith & Co., attorneys of the Insurance Company of North America, of Philadelphia, who, being first duly sworn, says that, of his own knowledge, said company — a creditor of Gilbert H. Green & Co. in the sum of sixteen hundred and sixty $\frac{4.2}{1.0.0}$ dollars; that the same is justly and lawfully due; that he accepts, in behalf of said company, the surrender of property made by the insolvent, grants him a full release and discharge, and votes for Cæsar A. Phillippi for syndic.

MARSHALL J. SMITH.

(Signed) N. B. TRIST, *Not. Pub.*

And it being now the hour of five p. m. and no other creditor having appeared, I, said notary, adjourned the present meeting to tomorrow, February 5th, 1887, at the hour of ten a. m., and have signed the process verbal of this day's proceedings, together with said two witnesses.

(Signed) N. B. TRIST,
Not. Pub.

JNO. DEMAREST.
AMBROSE SMITH.

47 On this fifth day of February, 1887, in my office and before me, the undersigned notary, personally came and appeared the following-named creditors of the insolvent, who declared as follows:

Louis Eichler, being first duly sworn, says that he is a creditor of the firm of Gilbert H. Green & Co. in the sum of ten $\frac{4.5}{1.0.0}$ dollars; that the same is justly and lawfully due; that he accepts the surrender of property made by the insolvent, grants him a full release and discharge, and votes for Cæsar A. Phillippi for syndic.

(Signed) LOUIS EICHLER.
N. B. TRIST, *Not. Pub.*

And no other creditors appearing this day, I, said notary, adjourned the present meeting to Monday, February 7th, at 10 o'clock a. m., and have signed the process verbal of this day's proceedings, together with said two witnesses.

(Signed) N. B. TRIST, *Not. Pub.*

JNO. DEMAREST.
AMBROSE SMITH.

On this seventh day of February, 1887, in my office and before me, the undersigned notary, personally came and appeared the following-named creditors of the insolvent, who declared as follows:

J. A. Chalaron, president of the Hope Insurance Company of this city, who, being by me first duly sworn, says that said company is the creditor of Gilbert H. Green & Co. in the sum of twenty-two $\frac{95}{100}$ dollars; that the same is justly and lawfully due; that he accepts the surrender of property made by the insolvent, grants him
48 a full release and discharge, and votes for Cæsar A. Phillippi for syndic.

(Signed) J. A. CHALARON,
Pres'd't Hope Ins. Co.
N. B. TRIST, *Not. Pub.*

Jules Tuyes, president of the New Orleans Insurance Co., of this city, being by me first duly sworn, says that the said company is the creditor of said Gilbert H. Green & Co. in the sum of nineteen $\frac{13}{100}$ dollars; that the same is justly and lawfully due; that he accepts the surrender of property made by the insolvent, grants him a full release and discharge, and votes for Cæsar A. Phillippi for syndic.

(Signed) J. TUYES,
Pres'd't N. O. Ins. Co.
N. B. TRIST, *Not. Pub.*

Henry Charnock, who, being by me first duly sworn, says that he is a creditor of the firm of Gilbert H. Green & Co. in the sum of fifteen $\frac{82}{100}$ dollars; that the same is justly and lawfully due; that he accepts the surrender made by the insolvent, grants him a full release and discharge, and votes for Cæsar A. Phillippi for syndic.

(Signed) H. CHARNOCK.
N. B. TRIST, *Not. Pub.*

S. W. Rawlins, being by me first duly sworn, says that he is a creditor of the firm of Gilbert H. Green & Co. in the sum of
49 forty $\frac{65}{100}$ dollars; that the same is justly and lawfully due; that he accepts the surrender of property made by the insolvent, grants him a full release and discharge, and votes for Cæsar A. Phillippi for syndic.

(Signed) S. W. RAWLINS.
N. B. TRIST, *Not. Pub.*

W. A. Fauche, a member of the firm of Garcia & Fauche, being first duly sworn, says that his firm is a creditor of Gilbert H. Green & Co. in the sum of twenty-three $\frac{50}{100}$ dollars; that the same is justly and lawfully due; that he accepts the surrender of property made by the insolvent, grants him a full release and discharge, and votes for Cæsar A. Phillippi for syndic.

(Signed) W. A. FAUCHE.
N. B. TRIST, *Not. Pub.*

And it being now five o'clock p. m. of the tenth day since the present meeting was opened, I, said notary, closed the *procès-verbal* thereof, from which it appears that nineteen creditors of said firm of Gilbert H. Green & Co., whose claims aggregate seventeen thousand one hundred and forty-one $\frac{74}{100}$ dollars, appeared and took part in those proceedings, and that they unanimously voted to grant a full discharge to the insolvents, and voted also unanimously for Cæsar A. Phillippi for syndic.

And also personally appeared at this meeting James B. Guthrie, the attorney appointed by the court to represent the absent creditors, and declared that he has taken full cognizance of the same.

50 In witness whereof I have signed these presents, together with the said two competent witnesses, Ambrose Smith and John Demarest, this seventh day of February, 1887.

(Original signed) JAMES B. GUTHRIE,
Att'y for Absent Creditors.
N. B. TRIST, *Not. Pub.*

AMBROSE SMITH.
JNO. DEMAREST.

I hereby certify the above and foregoing to be a true copy of the original on file in my notarial records.

As witness my official seal and signature, at New Orleans, this twenty-ninth of January, 1887.

[L. S.] —— ——.

Petition for Letters as Syndic. Filed March 3rd, 1887.

GILBERT H. GREEN *vs.* HIS CREDITORS. } No. 19734. Div. "E."

And now comes Cæsar A. Phillippi and shows to the court that at a meeting of the creditors in the suit of Gilbert H. Green *vs.* His Creditors and the Creditors of Gilbert H. Green & Co. and Green, Stewart & Co., convened before Nicholas B. Trist, notary public, in the city of New Orleans, on the twenty-ninth day of January, 1887, pursuant to the former order of this court, and adjourned from

51 day to day according to law, he was unanimously elected syndic, and that the *procès-verbal* of said meeting has been duly filed in this court, and more than ten days have elapsed since the filing thereof and there has been no opposition thereto, and that a full discharge has been voted to be granted to said insolvent.

Now, therefore, petitioner prays that he be appointed syndic of the estate of Gilbert H. Green, and upon his giving bond as may be required by this court, and according to law, that letters be issued to him as syndic.

(Signed) ALFRED GOLDTHWAITE,
Att'y for Cæsar A. Phillippi.

Order of Court.

Let Cæsar A. Phillippi be appointed syndic of the insolvent estate, and letters issue to him upon his giving bond in the sum of five thousand dollars, according to law.

New Orleans, March 3rd, 1887.

(Signed) ALBERT VOORHIES, *Judge.*

Syndic's Bond Filed March 8th, 1887.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

52 Know all men by these presents that we, Cæsar Phillippi, as principal, and Jules Mazerat as surety for one thousand dollars and Jules Aldige for four thousand dollars, of the State of Louisiana, are held and firmly bound unto the judges of the civil district court for the parish of Orleans in the sum of five thousand dollars, as is above written, current money of the United States of America, which we promise to pay to them or their successors in office, for the faithful performance of which we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents, renouncing all benefit or division or discussion whatever.

Sealed with our seals this 8th day of March, in the year of our Lord one thousand eight hundred and eighty-seven, and the 111th of the Independence of the United States of America.

The condition of the above obligation is such that if the above-bounden Cæsar Phillippi, syndic of the creditors of Gilbert H. Green, individually and as a member of the firm of Gilbert H. Green & Co. and Green, Stewart & Co., does well and truly, according to law, administer and liquidate the affairs of the same, and further does make and render a true, just, and perfect account of his actions and doings when thereunto lawfully required agreeably to law, then this obligation to be void, or else to remain in full force and virtue.

In witness whereof we have hereunto set our hands and seals this day and year first above written.

(Signed) CÆSAR PHILIPPI.
JULES MAZERAT.
J. ALDIGE.

In the presence of—
(Signed) A. GOLDTHWAITE.

53 *Oath of Syndic. Filed March 8th*, 1887.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Div. "E."

GILBERT H. GREEN *vs.* HIS CREDITORS. } No. 19734.

Before me, Octave Morel, notary public for the parish of Orleans, personally came and appeared Cæsar Phillippi, who solemnly swears that he will well and faithfully perform all and singular the duties of syndic in the case of Gilbert H. Green *vs.* His Creditors.

(Signed) CÆSAR PHILLIPPI.

Sworn to and subscribed before me.
New Orleans, 8th March, 1887.

[L. S.] (Signed) OCTAVE MOREL,
Not. Pub.

[Endorsed:] Letters of syndic. No. 19734. Gilbert H. Green *vs.* His Creditors and the Creditors of Gilbert H. Green & Co. and Green, Stewart & Co.

54 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "E."

This shall certify to all whom it may concern that on the 3rd day of March, in the year of our Lord one thousand eight hundred and eighty-seven, and the 111th year of the Independence of the United States of America, an application was made to the Honorable Albert Voorhies, judge of the civil district court for the parish of Orleans, division "E," by Cæsar Phillippi, praying that he might be appointed syndic of the creditors of Gilbert H. Green individually and as a member of the late commercial firm and partnership of Gilbert H. Green & Co., of New Orleans, and also of Green, Stewart & Co., of Liverpool, England, insolvent herein.

Know ye that Cæsar Phillippi has been, and he is hereby, appointed syndic of the creditors of the said insolvent, and that he has fulfilled all the requisites of the law.

Witness our hands and seals of the said civil district court this 8th day of March, in the year of our Lord one thousand eight hundred and eighty-seven, and in the 111th year of the Independence of the United States.

(Signed) ALBERT VOORHIES, *Judge.*
JAS. D. RANKIN, *D'y Clerk.*

Motion and Order to Withdraw Money from Bank. Filed April 7th, 1887.

55 GILBERT H. GREEN *vs.* HIS CREDITORS. } No. 19734. Div. "E."

On motion of A. Goldthwaite, Esq., att'y for Cæsar Philippi, syndic, and on suggesting to the court that there are certain bills due and owing by the insolvent estate, viz., to the New Orleans Bee, $8.40; to the New Orleans Picayune, or Nicholson & Co., $8.40, and N. B. Trist, notary public, $100, and that other small expenses will have to be incurred by said estate:

It is ordered by the court that the syndic, Cæsar Philippi, be authorized to withdraw from the bank the sum of one hundred and fifty dollars to pay said bills, and take vouchers for the same, and the balance of said one hundred and fifty dollars to reserve to pay petty bills, in all cases to take vouchers when practicable.

I, W. J. McGeehan, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing forty-two (42) pages do contain a true and correct copy of the petition of insolvency, Schedules "A," "B," "C," and "D," affidavits annexed to schedule and petition, order of court accepting cession, notice of appointment of attorney for absent creditors and sheriff's return thereon, *procès-verbal* (copy) of the meeting of creditors, petition for letters
56 as syndic, bond of syndic, oath of syndic, letters of syndic, order of court appointing syndic, and motion and order of court authorizing syndic to withdraw money from bank.

[SEAL.] (Signed) W. J. McGEEHAN, *Clerk.*

Deed of Sale Referred to in Statement of Facts.

Be it known that on this nineteenth day of the month of May, in the year of our Lord one thousand eight hundred and eighty-two, before me, Theodore Guyol, a notary public, duly commissioned and sworn, for the parish of Orleans, State of Louisiana, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Simon Hernsheim, a resident of this city, who declared that he does by these presents grant, bargain, sell, assign, convey, transfer, and deliver, with full warranty, unto Mrs. Anna H. Hunton, wife of Gilbert H. Green, of this city, by whom she is herein assisted and authorized, present purchasing and acknowledging due delivery and possession thereof for herself, her heirs and assigns—

1. A certain lot or portion of ground situate in the fourth district of this city, in the square bounded by St. Charles avenue, Carondelet, Seventh, and Eighth streets, forming the corner of St.
57 Charles avenue and Seventh streets, and measuring ninety-five feet front on St. Charles avenue by a depth between equal

and parallel lines of one hundred and twenty feet fronting on Seventh street.

2d. Another lot or portion of ground situate in the same district and square, adjoining the property above described in the rear, and measuring twenty feet or more, if more there be, front on Seventh street, commencing at a distance of one hundred and twenty feet from the corner of Seventh and St. Charles avenue by one hundred and twenty-seven feet two inches in depth between parallel lines, and being that part of a portion nearest to St. Charles avenue of a certain lot designated by the No. eighteen on a particular plan, a sketch of which is annexed for reference to an act passed before W. J. Castell, notary, on the thirteenth day of February, 1872, said two lots or portions of ground forming together a portion of ground measuring ninety-five feet front on St. Charles avenue by one hundred and forty feet or more, if more there be, in depth and front on Seventh street, one hundred and twenty feet in depth on the opposite side line towards Eighth street, at which depth the said portion of ground widens thirty-two feet two inches on a line running parallel with St. Charles street towards Eighth street; thence it has a further depth of twenty feet or more, if more there be, to its rear line, on which it has a width of one hundred and twenty-seven feet two inches, the whole as shown by a sketch annexed to an act of exchange between the said Hernsheim and Mrs. Minerva Ann Scott, widow of the late Richard Flower, by which he, the said Hernsheim, acquired
58 the said property, together with all the buildings and other improvements on the said described property, and all the rights, ways, privileges, and appurtenances thereunto belonging:

To have and to hold the said described property unto the said purchaser, her heirs and assigns, forever; and the said vendor, moreover, transfers unto the said purchaser all the rights and actions of warranty to which he is or may be entitled against all the former owners and vendors of the said property, subrogating the said purchaser to the said rights and actions to be by her enjoyed and exercised to the fullest extent by virtue hereof.

This sale is made and accepted for and in consideration of the price and sum of fifteen thousand dollars, in deduction of which the said purchaser has paid the sum of six thousand dollars in ready money to the said vendor, and for the balance she has given and furnished her two several promissory notes for the sum of four thousand five hundred dollars each, drawn to the order of and endorsed by herself, dated this day, bearing eight per cent. interest from their date until paid, and payable, respectively, in one and two years; which notes, after being countersigned and paraphed by me, notary, to identify them with this act, were delivered to the said vendor, who acknowledges the receipt thereof, as well as of the said ready money.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of said notes or any part thereof the purchaser binds herself to pay the fees of the attorney-at-law who may be employed for that purpose, which are
59 hereby fixed at five per cent. on the amount sued for.

Now, in order to secure the full and punctual payment of the said notes, together with all interest and attorneys' fees as aforesaid, the said purchaser does hereby mortgage and specially hypothecate the said property to her, said vendor, and other future holders of said notes with promise not to sell, alienate, or encumber the said property to the prejudice of this act, and she, moreover, binds herself to keep the buildings on the said property constantly insured against loss by fire to an amount not less than nine thousand dollars, and to transfer the policy of insurance to the said vendor or other holders of the said notes until the full and final payment thereof.

This sale is further made under the express condition that the purchaser shall pay all State taxes on said property for the current year, all other taxes having been paid by the vendor.

According to the annexed certificates of the register of conveyances and recorder of mortgages for this parish the said property has not heretofore been alienated by the said vendor, and it is free from incumbrances.

Done and passed in my office in the presence of Ambrose G. La Pice and Lafayette Guyol, competent witnesses, who have signed these presents with the parties and me, notary.

(Original signed) ANNA H. HUNTON,
Wife of Gilbert H. Green.

[SEAL.] GILBERT H. GREEN.
S. HERNSHEIM.
H. G. LA PICE.
LAF. GUYOL.
THEO. GUYOL, *Not. Pub.*

A true copy from the original.

THEO. GUYOL, *N. Pub.*

60 *Bond for Writ of Error. Filed June 18th*, 1887.

Know all men by these presents that we, the commercial firm of Geilinger & Blum, and The Bank in Winterthur and R. B. Pleasants, U. S. marshal, as principal, and Edgar H. Farrar, as surety, are held and firmly bound unto Cæsar Philippi, syndic of the insolvent, Gilbert H. Green, and Gilbert H. Green in the full and just sum of two hundred and fifty dollars, to be paid to the said C. Philippi, syndic, and the said Gilbert H. Green, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 18th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, at New Orleans, in a suit depending in said circuit court, wherein Cæsar Philippi, syndic, was plaintiff in intervention and third opposition, and Geilinger & Blum and The Bank in Winterthur and Gilbert H. Green and R. B. Pleasants, U. S. marshal, were def'ts,

judgment was rendered against Geilinger & Blum, The Bank in Winterthur, R. B. Pleasants, U. S. marshal, and Gilbert H. Green, defendants, and the said Geilinger & Blum, The Bank in Win-
61 terthur, and R. B. Pleasants, U. S. marshal, having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Cæsar Philippi, syndic, and the said Gilbert H. Green, citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said Geilinger & Blum, the Bank in Winterthur, and R. B. Pleasants, U. S. marshal, shall prosecute their writ to effect and answer all damages and cost if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—

(Signed) GEILINGER & BLUM.
THE BANK IN WINTERTHUR, [L. S.]
P'r FARRAR & KRUTTSCHNITT, *Att'ys.* [L. S.]
R. B. PLEASANTS, *U. S. M.* [L. S.]
EDGAR H. FARRAR.

Bond accepted.
June 18, '87.
(Signed) DON A. PARDEE, *Judge.*

UNITED STATES OF AMERICA, } *ss:*
District of Louisiana, }

62 Personally appeared Edgar H. Farrar, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans and is worth the full sum of two hundred and fifty dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) EDGAR H. FARRAR.

Subscribed and sworn before me this 18th day of June, 1887.
[SEAL.] (Signed) ALPHONSE PHILIPS,
Not. Pub.

63 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 62 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the consolidated case of Geilinger & Blum *vs.* Gilbert H. Green, third opposition and

intervention of Cæsar Philippi, syndic; Bank in Winterthur *vs.* Gilbert H. Green, third opposition and intervention of Cæsar Philippi, syndic, Nos. 11486 — 11487 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 18 day of July, A. D. 1887.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 18 day of July, A. D. 1887.

DON A. PARDEE, *Judge.*

64 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit and holding sessions for the eastern district of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between the commercial firm of Geilinger & Blum, composed of Paul R. Sulzer, L. Reinhart, and A. Hahnloser; the Bank in Winterthur, a corporation organized under the laws of the Canton of Zurich, in the Swiss Republic, and Cæsar Philippi, syndic of the insolvent Gilbert H. Green, and Gilbert H. Green and R. B. Pleasants, U. S. marshal, a manifest error hath happened to the great damage of the said commercial firm of Geilinger & Blum, composed as above, and the said Bank in Winterthur and the said R. B. Pleasants, U. S. marshal, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable M. R. Waite, Chief Justice of the said Supreme Court of the United States, this 13th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

U. S. Circuit Court, E. Dist. of La.

GEILINGER & BLUM *vs.* GILBERT H. GREEN. Intervention & 3d opposition of Cæsar Philippi, syndic. BANK IN WINTERTHUR *vs.* GILBERT H. GREEN. Intervention & 3d opposition of Cæsar Philippi, syndic.	Nos. 11486 & 11487.

Consolidated case.

Now come Geilinger & Blum & the Bank in Winterthur, and assign as error in the record in this cause—

1st. That the court erred in refusing plaintiffs in error the right to prove the facts set forth in the bill of exceptions herein filed.

2d. That the court erred in concluding as a matter of law that Gilbert H. Green had surrendered the property seized in this cause under & by virtue of the insolvent proceedings, No. 19734 of the civil dist. court.

3d. That the court erred in ordering the release of the property herein seized.

Wherefore they pray the judgment of the Supreme Court of the United States thereon, & pray that the judgment herein may be avoided & reversed.

FARRAR & KRUTTSCHNITT, *Att'ys.*

65 [Endorsed:] United States circuit court. Nos. 11486 & 11487. Consolidated case. Geilinger & Blum *versus* Gilbert H. Green. Intervention & 3d opposition of Cæsar Philippi, syndic. Bank in Winterthur *vs.* Gilbert H. Green. Intervention & 3d opposition of Cæsar Philippi, syndic. Writ of error. Writ of error returnable to the Supreme Court of the United States on the 2d Monday in October, 1887, Filed June 13, 1887. E. R. Hunt, clerk.

66 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Cæsar Philippi, syndic of the insolvent Gilbert H. Green, New Orleans, La., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Geilinger & Blum, The Bank in Winterthur, and R. B. Pleasants, U. S. marshal, are plaintiffs and Cæsar Philippi, syndic of the insolvent Gilbert H. Green, and Gilbert H. Green are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

67 [Endorsed:] United States circuit court, eastern district of Louisiana. Nos. 11486 & 11487. Consolidated case. Geilinger & Blum *vs.* Gilbert H. Green. Intervention and 3rd opposition of Cæsar Philippi, syndic. Bank in Winterthur *vs.* Gilbert H. Green. Intervention & 3rd opposition of Cæsar Philippi, syndic. Citation. Filed June 20, 1887. E. R. Hunt, clerk.

Marshal's Return.

Received Jun. 20, 1887, by the U. S. marshal, and on the 20th day of June, 1887, I served a true copy of within citation in error on the defendant, Cæsar Philippi, syndic of the insolvent Gilbert H. Green, by handing the same to him in person in the city of New Orleans & leaving the same in his hands; returned same day.

R. B. PLEASANTS,
U. S. Marshal, E. D. of La.,
By JNO. BAKER,
Dep'ty U. S. Marshal.

I, John Baker, being duly sworn, do depose and say I am a lawful deputy United States marshal for the eastern district of Louisiana, and that the service as above written is true and correctly stated.

JOHN BAKER.

Sworn & subscribed to before me this 20th day of June, 1887.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

68 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Gilbert H. Green, New Orleans, La., Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Geilinger & Blum, The Bank in Winterthur, and R. B. Pleasants, U. S. marshal, are plaintiffs and Cæsar Philippi, syndic of the insolvent Gilbert H. Green, and Gilbert H. Green are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of June, in the year of our Lord one thousand eight hundred and eighty-seven.

DON A. PARDEE, *Judge.*

69 [Endorsed:] United States circuit court, eastern district of Louisiana. Nos. 11486 & 11487. Consolidated case. Geilinger & Blum *vs.* Gilbert H. Green. Intervention and 3rd opposition of Cæsar Philippi, syndic. Bank in Winterthur *vs.* Gilbert H. Green. Intervention & 3rd opposition of Cæsar Philippi, syndic. Citation. Filed June 20, 1887. E. R. Hunt, clerk.

Marshal's Return.

Received Jun. 20, 1887, by the U. S. marshal, and on the same day I served a true copy of within citation in error on Gilbert H. Green, defendant in error herein, by handing the same to him in person in the city of New Orleans & leaving the same in his hands; returned June 20, '87.

R. B. PLEASANTS,
U. S. Marshal,
By JNO. BAKER,
Deputy U. S. Ma-shal.

I, John Baker, being duly sworn, do depose and say I am a lawful deputy U. S. marshal for the eastern district of Louisiana, and that the service as above written is true and correctly stated.

JOHN BAKER.

Sworn & subscribed to before me this 20 day of June, 1887.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

E. R. HUNT, *Clerk.*

Endorsed on cover: E. Louisiana C. C. U. S. No. 992. Geilinger & Blum, a commercial firm, composed of Paul R. Sulzer, L. Reinhart, & A. Hahnloser; The Bank in Winterthur, & R. B. Pleasants, U. S. marshal, plaintiffs in error, *vs.* Cæsar Philippi, syndic of the insolvent Gilbert H. Green, and Gilbert H. Green. Filed August 8, 1887.

JAN 7 1890
JAMES H. McKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 367.

GEILINGER & BLUM AND OTHERS

versus

CÆSAR PHILLIPPI, SYNDIC, AND OTHERS.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF IN BEHALF OF GEILINGER & BLUM AND OTHERS, PLAINTIFFS IN ERROR.

EDGAR H. FARRAR,
B. F. JONAS,
ERNEST B. KRUTTSCHNITT,
Counsel for Plaintiff in Error.

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Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 367.

GEILINGER & BLUM AND OTHERS

versus

CÆSAR PHILLIPPI, SYNDIC, AND OTHERS.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

BRIEF IN BEHALF OF GEILINGER & BLUM AND OTHERS, PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

Geilinger & Blum are an alien firm, domiciled at Winterthur, in the canton of Zurich, in Switzerland; and the bank in Winterthur is an alien corporation, domiciled in the same locality.

On the 26th day of November, 1886, they brought actions at law in the court below against Gilbert H. Green, who was a citizen of the state of Louisiana, domiciled in the parish of Orleans.

On the 31st day of January, 1887, they recovered judgments in those suits against said Gilbert H. Green, Geilinger & Blum for $10,509.68, and the bank in Winterthur for the sum of $40,306.64, with interest.

During the pendency of these suits—to-wit: on the 26th of December, 1886—Gilbert H. Green made a surrender of his property in due form of law under the insolvent law of the state of Louisiana, individually and as a member of various commercial firms to which he belonged.

At the foot of the schedules, describing the property which he surrendered, he made this sworn statement: "*The house in which I reside on St. Charles street, and the furniture therein, is the individual property of my wife, and I have no claim thereto.*"

This St. Charles street property was not described in the schedules. It was purchased during the marriage of Gilbert H. Green and his wife, Anna Green, and the title was taken in the name of the wife. All the parties to this controversy concede that this purchase made it community property, and therefore liable for the debts of Gilbert H. Green.

The surrender of Green was duly accepted by the court, in the form and manner in which it had been made; a meeting of his creditors was called, and at that meeting nineteen out of twenty-eight local creditors appeared, proved their debts, voted for Green's discharge, and elected Cæsar Phillippi syndic, who qualified and was commissioned as such syndic.

None whatever of the foreign creditors of Green took any part in these proceedings. (Record, page 27.) This meeting of creditors was closed on the 7th day of February, 1887.

On the 20th of May, 1887, Geilinger & Blum and the bank in Winterthur caused writs of *fi. fa.* to issue upon their judgments, and directed the marshal to levy them upon the St. Charles street property. This property was then in the possession of Gilbert H. Green and his wife. It was their matrimonial domicile, and had been continuously in possession of the said Green and wife from the date of the purchase thereof down to the date of the seizure under the writs of *fi. fa.;* and up to the time that the seizure was made no demand had been made upon Green and wife by Cæsar Phillippi, syndic, for the said prop-

erty, and no claim of title of possession had been set up by said Phillippi, syndic, for the said property. (See statement of facts, page 13.)

Shortly after this seizure was made, Cæsar Phillippi, syndic, filed what is known, under the practice of Louisiana, as a "third opposition," asking that the seizure be set aside, the property released, and that the United States marshal be enjoined from proceeding to advertise and sell the property, upon the plaintiff's giving bond according to law. The court issued a preliminary order restraining the advertisement and sale. The two cases were by agreement consolidated and tried together. The plaintiffs waived trial by jury, and submitted the case to the court, which made a special finding of the facts. Thereupon the court made the preliminary order peremptory, and restrained the United States marshal for the eastern district of Louisiana from advertising and selling the property, upon the condition, however, that the said Phillippi, syndic, should pay all the costs which had been incurred in the making of said seizure, and should also present and file in the cause an order from the Civil District Court for the parish of Orleans, Division E, authorizing and ordering him to take possession of said property of said Green and wife, and to administer the same as part of the insolvent estate of said Gilbert H. Green, committed by said court to the charge of said syndic.

To this judgment Geilinger & Blum, the bank in Winterthur and the United States marshal have prosecuted this writ of error.

During the trial Gilbert H. Green was placed upon the stand, and it was offered to be proven by him that in making the surrender of his property to the Civil District Court, under the insolvent law of Louisiana, he did not intend to include in that surrender property seized in this case, for the reason that he was informed and advised by his counsel that the said property was the property of his wife, and was not liable for his debts, cov-

ered by the said surrender. The court excluded this testimony, on the ground that it was irrelevant, and that Green's intention in making the surrender would not affect the issue in this cause. To this ruling the plaintiffs in error took a bill of exceptions, which will be found at page 11 of the record.

The errors assigned by the plaintiffs are :

(1) That the court erred in refusing the plaintiffs in error the right to prove the facts set forth in the bill of exceptions.

(2) That the court erred in concluding as a matter of law that Gilbert H. Green had surrendered the property seized in this case under and by virtue of the insolvent proceedings No. 19,734 of the Civil District Court.

(3) That the court erred in ordering the release of the property herein sued for.

ARGUMENT

The point in this case is a very narrow one. Was the seized St. Charles street property either actively or constructively in *grenio legis*, so as to exclude the circuit court of the United States from levying on it?

We concede that Green ought to have surrendered the St. Charles street property ; because, under the law of Louisiana, it was community property and liable for his debts. The purchase of the property in the name of the wife did not make it her property.

We concede further that if he had casually omitted it from his schedules] it would have passed under the control of the syndic of the creditors, and under the doctrine of Bank of Tennessee vs. Horn, 17 Howard 517, would not have been liable to seizure.

We concede further that if he had fraudulently omitted this property from his schedule, and put the title in the name of his wife before his cession, an action would lie by his syndic to recover it.

But we contend that, as Green expressly declared, under oath, in his schedule that the property was not his, but his wife's, and, as he not only did not actually surrender it, but did not intend that his insolvent proceedings should have such an effect, and, as his surrender, *in the form and manner as made*, was accepted by the court and by the controlling majority of his local creditors, and as the syndic made no pretense of claim of title or possession until after the seizure by the marshal, the property remaining thus in Green's actual possession was not *in gremio legis* so as to exclude his foreign creditors, who were in no manner bound by his insolvent proceedings, from levying their writs upon it.

1st. Under the *cessio bonorum* of the civil law, whether voluntary or forced, the legal title to the property ceded by the insolvent remains in him, and does not pass to the creditors or to the syndic.

The following are the provisions of the Louisiana Code on the subject.

Article 2175. "The surrender does not give the property to the creditors; it only gives them the right of selling it for their benefit and receiving the income of it till sold."

Article 2178. "As the debtor preserves his ownership of the property surrendered, he may divest the creditors of their possession of the same at any time before they have sold it by paying the amount of his debts, with the expenses attending the cession."

Section 1791 of the Revised Statutes provides that, "from and after such cession and acceptance, all the property of the insolvent debtor mentioned in the schedule shall be fully *vested* in his creditors."

The word "*vested*," so used in the Revised Statutes, does not mean that the ownership passes, but only a precarious right of administration and control, subject to be defeated at any time by the debtor's payment of his debts. There may be some

loose expressions, here and there in the Louisiana reports, about the property of the insolvent vesting in his creditors, but the established jurisprudence is to the contrary.

In Rivas vs. Hunstock, 2 Robinson 187, the court says: "Where property has been surrendered by a debtor, his creditors have no more ownership of it than if it had been seized under a *fi. fa.* * * * But it is insisted, that, as under the statutes of 1826 (now section 1791 of the Revised Statutes) all the property of the insolvent is vested in his creditors, they became the owners of it, and should be placed on the same footing as the heirs. On an attentive examination of the whole statute it will be found that, although, by the acceptance of the *cessio bonorum*, made by the judge for the benefit of the creditors, the property is vested in the latter, so as to be no longer liable to seizure and attachment or execution, the creditors acquire no real right of ownership or dominion over of it. The property vests only to a certain extent, and for certain purposes. They cannot hold it in common, nor partition it in kind; it is in their hands only as a pledge, which they are bound to have sold in the manner pointed out by law, to divide the proceeds among themselves; but the real ownership yet remains in the debtor," etc.

In Smalley vs. His Creditors, 3 Ann. 386, the court says:

"The counsel for the appellants contends that the property ceded by the insolvent *vested absolutely* in the creditors, etc. This question can no longer be considered open. In the case of Rivas vs. Hunstock (*supra*) it was held that the acceptance of the surrender by the judge did not vest the property absolutely in the creditors, so as to confer on the latter a right of ownership or dominion over it; that it remains in their hands only as a pledge, which they are bound to have sold in order to distribute the proceeds among the creditors, and to pay the surplus, if any, to the ceding debtor."

In Walling vs. Morefield, 33 Ann. 1177, the court says:

"It has been frequently held, and we take it as the settled doctrine in our jurisprudence, that the surrender of an insolvent does not divest him of title to the property which he surrenders, but merely strips him of all power to control, alienate or dispose of the same during the administration of his estate."

And in Jaquet vs. His Creditors, 38 Ann. 886, the court says:

"That the title of the property, at the date of the surrender, was in the insolvents is true, but it is not true that the effect of the cession was to convey their title to the creditors. On the contrary, by positive provision of our law, the insolvent debtor 'preserves his ownership of the property surrendered.' The possession passes to the creditors when there is no legal obstacle to its transmission."

It is therefore manifest that there is a fundamental difference between the *cessio bonorum* of Louisiana, and the general bankrupt and insolvent laws of the United States and of the other states.

Under all other systems the surrender operates *ipso facto* a divestiture of the debtor's title, and an investiture of that title in an assignee, either by operation of law, or by formal assignment executed by the court.

Under the Louisiana law the debtor's title is not divested by surrender. He simply surrenders the right to administer his property and delivers it to the court to be sold under its orders for the benefit of his creditors.

2d. The law of Louisiana requires the application of an insolvent to make surrender of his property to be laid before the court to which the application is made, and the acceptance of the surrender, in the form and manner as made, is submitted to the judicial discretion of the judge. State *ex rel.* Boyd vs. Green, 34 Ann. 1020.

"The order accepting a cession and staying proceedings is, indeed, a judgment which demands the exercise of legal discrim

ination, and which, when granted, can only be set aside by appeal or action in nullity." (Ib.)

When Green's application to surrender his property was made to the court, the judge who examined it found on the face of the schedule of assets proposed to be surrendered this statement: "The house in which I reside on St. Charles street, and the furniture therein, is the individual property of my wife, and I have no claim thereto." (Record, page 18.)

He accepted the surrender as made, *which necessarily excluded the St. Charles street property.*

When the creditors assembled, and considered Green's application, the proces-verbal of the notary (record, page 21) shows that they also took cognizance of his schedules, and therefore of the above quoted material part thereof. They voted to accept his surrender *as made*, excluding the St. Charles street property from his estate, elected a syndic, and granted Green a discharge. Nineteen out of twenty seven local creditors, representing more than half of his local debts, took part in this meeting.

The syndic who was elected by the creditors qualified and went into possession of the surrendered estate. Green and his wife were left in possession of the St. Charles street property, and the syndic set up, as against them, no claim of title or possession of the property, and made no demand upon them whatever for delivery of the same. (Record, page 13.)

The court, the creditors and the syndic of the creditors, who is nothing more nor less than the representative of the creditors, are clearly estopped by these judicial proceedings from claiming that they or any of them had any right to say that this St. Charles street property was in the possession of the Civil District Court to be administered as part of Green's property.

3d. The insolvent proceedings in the state court, and the insolvent laws of Louisiana have no extraterritorial effect, and

do not affect or control non-resident creditors, unless they voluntarily make themselves parties to the proceedings.

Ogden vs. Sanders, 12 Wheaton 213.
Baldwin vs. Hale, 1 Wall. 223.
Gilman vs. Lockwood, 4 Wall. 411.
Towne vs. Smith, 1 Wood & M. 136.
Judge Taney's Opinion, 8 Gill 499.
Poe vs. Duck, 5 Md. 1.

The statement of facts finds that these plaintiffs took no part in Green's insolvent proceedings.

They had a right to seek the jurisdiction of the United States Circuit Court and there to prosecute their claims to judgment. They had a right to execute that judgment upon any property within the jurisdiction of the court, with the sole proviso that in so doing they should not violate that fundamental rule of judicial comity laid down in Taylor vs. Carryl, 20 How. 594, and Freeman vs. Howe, 24 How. 450.

Under these circumstances they find their debtor in undisputed possession of property which is legally his. They levy upon it. Then, and not till then, the syndic of the debtor's creditors, who is an officer of a state court, who is out of possession of the property, who has never before made any claim of possession or title, who was appointed in a proceeding where, by the sworn statement of the debtor, the acceptance of the court, and the vote of the creditors, this property was specially excluded from the debtor's estate, comes forward and asks that the levy be restrained, claiming that he is *owner*, and entitled himself to take the seized property away from the debtor, and to administer the same under the orders of a foreign tribunal.

We respectfully submit that under these circumstances the courts of the United States will not surrender their jurisdiction of the property, and allow it to be distributed among local creditors to the exclusion of all foreign creditors who are unwilling to submit themselves to the state insolvent law,

The case thus presents nothing but a question of the conflict of jurisdiction between two tribunals of concurrent jurisdiction, each having power to bind the goods of the defendant by its process. The rule in such cases is that where *the parties are not the same, nor the cause of action the same in both courts*, that court holds the property which first obtained physical custody of it. In other words, in such cases there is no such thing as constructive possession of property which is capable of actual possession—of physical prehension.

Payne vs. Drewe, 4 East 523.

Taylor vs. Carryl, 20 H. 594.

Freeman vs. Howe, 24 H. 450.

Wilmer vs. Atlantic, etc., Air Line R. R., 2 Woods 409.

Opinion of Judges Bradley and Erskine.

4th. All of Green's local creditors who appeared at th creditors' meeting, who voted to accept his surrender and to grant him a discharge, are estopped from saying that the St. Charles street property is part of Green's estate.

The local creditors who did not so appear might, by proper proceeding, have compelled the syndic to institute an action to recover this property; and this is the reason why the judge imposed upon the syndic, as a condition of the release of the seizure made by the marshal, that he should pay all the costs which have been incurred in the making of the seizure, and that he should also present and file in this cause an order from the Civil District Court, authorizing and directing him to take possession of said property from Green and wife, and to administer the same as part of the insolvent estate of Green committed to the charge of the court and the syndic. Record, page 13.

The necessity the judge found himself under of putting this proviso in the judgment, ought to have furnished him a conclusive reason for rejecting the syndic's claim.

If further action was necessary on the part of the state

court to invest itself of jurisdiction of the property, then such jurisdiction had not attached at the time of the seizure by the marshal, and such seizure ought to have stood.

Green was not made a party to the proceedings of intervention taken by the syndic. (Record, pages 3 and 5). The whole object of those proceedings was to compel the release of the federal seizure, and not to obtain possession and control of the property. If this release had been unconditionally granted, *non constabat* that the syndic ever would have disturbed the possession of Green and wife.

The foreign creditors had as much right to take proceedings to subject this property to their debt as the local creditors had.

After they had invested the federal court with jurisdiction of the property by means of their seizure, that jurisdiction could not be divested by *ex post facto* orders and decrees of the state court.

The state court and the creditors under its control and jurisdiction had acquiesced in Green's statement that the property was not his, and that he did not surrender it. It thereby virtually declined jurisdiction of the property, and could not take jurisdiction thereof after a foreign tribunal, of concurrent jurisdiction, had bound the property by its process.

We ask that the judgment below be reversed, and the cause remanded with instructions to dismiss the petitions of the syndic, with costs.

Respectfully submitted,

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Office Supreme Court U. S.
FILED,
JAN 7 1890
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889.

No. 367.

GERLINGER & BLUM, PLAINTIFFS IN ERROR,

versus

CÆSAR PHILIPPI, SYNDIC, ETC., DEFENDANT IN ERROR.

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T. H. Thomason, Printer, New Orleans.

SUPREME COURT OF THE UNITED STATES

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GERLINGER & BLUM, PLAINTIFFS IN ERROR,

versus

CÆSAR PHILIPPI, SYNDIC, ETC., DEFENDANT IN ERROR.

This cause is a writ of error from the Eastern District of Louisiana.

The suit was a third opposition of Cæsar Philippi, Syndic of the creditors of Gilbert H. Green, individually, and as a member of the late commercial firm and partnership of Gilbert H. Green & Co., of New Orleans, and also of Green, Stewart & Co. of Liverpool, England, in the suits of Bank of Winterthur vs. Gilbert H. Green, No. 11,486 on the docket of said Circuit Court, and Gerlinger & Blum vs. Gilbert H. Green, No. 11,477 on the docket of said Circuit Court. After the answers were filed by written agreement the two causes were consolidated to be tried as one case.

It was further agreed that trial by jury be waived. Printed Transcript, pp. 1 to 11.

Upon the trial the plaintiffs placed Gilbert H. Green upon the witness stand, and offered to prove by said Green, that in making the surrender of his property, as set forth in this Record No. 19,734, Division E, Civil District Court, referred to in the statement of facts in this cause, he did not intend to include in that surrender the property seized in this cause for the reason that he was informed and advised by his counsel, that the said property was the property of his wife, and was not liable for his debts or covered by the said surrender; to the introduction of which testimony the said Cæsar Philippi, Syndic, then and there objected on the ground that the said testimony was irrelevant, and that Green's intention in making his surrender would not affect the issue in this cause, which objections the Court sustained, and refused to allow said testimony to be adduced.

A bill of exceptions was taken to the ruling and is found at p. 11.

The finding of facts and judgment by the Court was as follows:

"This cause came on this day for trial, and the parties having filed a stipulation in writing, waiving the intervention of a jury and submitting the cause to the Court on the issues of law and of fact with the request that the Court do make a special finding of the facts. Whereupon the Court makes the following finding of facts:

"Gerlinger and Blum, a commercial firm, domiciled

and doing business at Winterthur, in Switzerland, filed their action against the defendant, Gilbert H. Green, on November 25th, 1886, and on the 31st day of January, 1887, recovered a verdict and judgment in this Court against Gilbert H. Green for the sum of ten thousand five hundred and nine $\frac{68}{100}$ dollars, with interest. The Bank in Winterthur, a corporation organized under the laws of the Canton of Zurich in the Swiss Republic, filed its action against Gilbert H. Green, on the 25th day of November, 1886, and on the 31st of January, 1887, recovered a verdict and judgment in this Court against Gilbert H. Green, for the sum of forty thousand three hundred and six $\frac{64}{100}$ dollars, with interest.

"On December 26th, 1886, Gilbert H. Green made a surrender under the insolvent law of the State of Louisiana, individually and as a member of the commercial copartnership of Gilbert H. Green & Company of New Orleans, Green, Stewart & Co. of Liverpool, England, in the form and manner set forth in the certified copy of the record of said insolvent proceedings, No. 19,734 of the docket of the Civil District Court, Parish of Orleans, which said record is made part of the finding of facts in this cause to show the character and contents of the proceedings had in said cause; that on or about the 20th of May, 1887, under writs of *alias fi. fa.* issued in the case of Gerlinger & Blum vs. Gilbert H. Green, and in the case of the Bank in Winterthur vs. Gilbert H. Green, the Marshal of this Court levied upon certain real estate de-

scribed in the petition of Cæsar Philippi, Syndic. This property was acquired by act before Theodore Guyol, Notary Public, of date May 19th, 1882, and said deed is here annexed and made part of this statement of facts to show the form, purport and contents thereof. At the time that this levy was made the said property was in possession of Gilbert H. Green and his wife, and was their matrimonial domicile, and the said property had been continuously in possession of the said Green and wife from the date of the purchase thereof down to the date of the seizure thereof under writs of *fi. fa.* in these causes.

"Up to the time that this seizure was made, no demand had been made upon Green and wife by Cæsar Philippi, Syndic, for the said property, and no claim of title or possession had been set up by the said Philippi, Syndic, for the said property.

" And thereupon the Court, upon these facts, finds the issues in favor of the said Cæsar Philippi, Syndic, and it is thereupon ordered, adjudged and decreed that the seizure of the said property above described upon the *alias* writ of *fi. fa.* issued in these causes, dated May 20th, 1887, be set aside and the property released by the Marshal, and that R. B. Pleasants, United States Marshal for the Eastern District of Louisiana, be restrained and enjoined from proceeding to advertise and sell the property herein claimed, upon this condition, however, that said Philippi shall pay all the costs which have been incurred in the making of said seizure and shall also present and file in this cause an

order from the Civil District Court for the Parish of Orleans, Division E, authorizing and directing him to take possession of said property from the said Green and wife and to administer the same as part of the insolvent estate of the said Gilbert H. Green, committed to the charge of the said Court and the said Syndic.

"It is further ordered, adjudged and decreed, that Gerlinger & Blum and the Bank in Winterthur be condemned jointly to pay the costs of this suit.

"Judgment rendered June 13th, 1887.

"Judgment signed June 17th, 1887.

(Signed) DON A. PARDEE, Judge."

Printed Transcript, pp. 12, 13.

The deed of sale referred to in the statement of facts is found at pp. 30, 31, 32. The title of Mrs. Anna Hunton Green was acquired from Simon Hernsheim on the 19th day of May, 1882. It purports to grant, bargain, sell, assign, convey, transfer and deliver with full warranty, unto Mrs. Anna H. Hunton, wife of Gilbert H. Green, by whom she was assisted and authorized, for herself, her heirs and assigns, all the property described in the act. The notes for the deferred payments were signed by Mrs. Green. It does not appear in the act that the purchase price was paid for with the paraphernal or separate estate of Mrs. Green.

ARGUMENT.

It is conceded by the counsel for plaintiffs in error

that the property ought to have been surrendered to the creditors by Green, and that it should have been placed upon the schedule of assets, being community property and liable for the debts of Green.

The cases of Miller vs. Handy, Sheriff, 33 An. 160; Bouligny vs. Fortier, 16 An. 214; Shaw vs. Hill, 20 An. 531, and Reid vs. Rochereau, 2 Woods C. C. Rep. 151, and Articles 2402-3, may be referred to.

There being no dispute as to the property being community property and liable for the debts, the question is, did it pass and does it belong to the Syndic of the insolvent for the benefit of the creditors under the insolvency proceedings?

In the case of Duncan & Jackson's Syndic vs. Duncan, 3 Martin O. S. at p. 232, it was said by the Court:

"The cession of goods must be a cession of *all* the goods, movable and immovable, rights and credits of the debtor. It matters not whether their proceeds may exceed eventually the amount of the debts. The whole property must be surrendered, to be administered and disposed of according to law. The creditors, by their syndic, must be put in possession of the whole. They have a right to collect every portion of the estate which they may come at. These are principles to be found everywhere, and which it would be ridiculous to support by quotations of authorities."

In Muse, Syndic, vs. Yarborough et als., 11 La. Rep. at p. 530, Mr. Justice Bullard, the organ of the Court, says:

"But it is urged, that only such property and rights as are set forth in the schedule, vest in the creditors. We do not so understand it. All the property of the debtor is presumed to be embraced in the schedule, because he is to swear that it is; and if any has been omitted, it is clear it does not belong to the debtor, but passes to the creditors by the cession. A contract tainted with fraud confers no rights, and property fraudulently disposed of is regarded as still belonging to the debtor at the moment of his failure, so far as the interests of his creditors are concerned."

In Levy vs. Jacobs et al., 12 La. Rep. at p. 112, Justice Carleton said:

"It appears to us that the cession made by the insolvent transferred to the creditors his right to the third part of the land in question, as fully as any other property he possessed and that his omission to mention it on his schedule cannot prejudice them."

See also Baldwin vs. Union Ins. Co., 2 Robinson's (La.) Rep. p. 133.

In West vs. His Creditors, 8 Robinson's Rep. p. 128, Justice Garland said:

"The evidence shows most conclusively that this was a debt owing to West by the Mexican government, not only previous to the surrender of his property in 1821, but to his application for a respite in 1819. By refusing or neglecting to put it on his *bilan* at the latter period or not surrendering it in 1821, when ordered, he has not acquired any right to it, nor can he, by putting the debt on his schedule when he went

into bankruptcy, take it away from the syndic of the creditors, and deprive them of a fund out of which they are entitled to be paid. This debt was in fact as much given up as any other, in 1821. The books in which the entries were made relating to it were given up; efforts were made to collect it, or get it recognized by the debtor. They were fruitless for a time, but at last successful. We consider it very immaterial, whether the syndic had only a right of administration under the Act of 1817 relating to voluntary surrenders or a vested right under the Act of 1826, which is supplementary thereto. In one capacity or the other he has a right to the fund to be applied to the discharge of the debts existing at the time when Lloyd & Harrison's proceedings terminated in a judgment. It is not material to the assignee whether Bennett recovers as administrator for the creditors under the first cession or as owner for their use."

In Dwight, Syndic, vs. Smith, Tutor, 9 Robinson, p. 33, Justice Bullard said: "Whether the claim was or was not on the schedule is of little importance. If it was in point of fact a debt due to the insolvent, it passed by the surrender to his creditors, together with all his other property or effects, whether mentioned or not in the schedule."

In Dwight, Syndic, vs. Simon et al., 4 An. 490: "When a *cessio bonorum* has been accepted by the court and the creditors and a syndic has been appointed and qualified, all the property and rights of property of the insolvent are vested in his creditors,

represented by the syndic as their trustee. All rights of an insolvent vest in his syndic, whether placed on his schedule or not."

If any sale had been actually made of property not put on the schedule it would have been a nullity. Duplessis vs. Boutté, 11 La. Rep. 345. The discharge granted by the creditors who voted does not extinguish the debts due to the creditors. It rather releases the debtor's person. Union Bank vs. Bagley, 10 Robinson, 43.

The doctrine that all the property of the insolvent, whether included in his schedule or not, passes to his creditors by the cession, was recognized and established by this Honorable Court as far back as the case of Bank of Tennessee vs. Horn, 17 Howard, 157. That case is very similar to the one now presented. It has not been overruled or qualified.

The doctrine in that case has been recently applied by this Court in the case of Tua vs. Carriere, 117 U. S. 208, which was a Louisiana case. The Court cite with approval the case of Nimick vs. Ingram, 17 La. An. 85, in which the following language is used: "The acceptance for the creditors by the court of the ceded estate vests in them all the rights and property of the insolvent whether placed on the schedule or not, and the syndic may sue to recover them."

It is perfectly immaterial to the case whether the insolvent law of Louisiana vests in the Syndic the title to the property ceded or not. It may be true

that the creditors do not become the *absolute owners* of the property ceded, but in the language of the Supreme Court of Louisiana: "The decisions of this Court establish that after acceptance of the *cessio bonorum* by the Judge for the benefit of creditors, the property surrendered is *vested in the latter so as to be no longer liable to seizure, attachment or execution*, but they acquire no real ownership in it."

In Walling's Heirs vs. Morefield, 33 An. 1177, while the Court say that the surrender does not divest the title of the insolvent to the property surrendered, yet it holds "by the surrender the insolvent is stripped of all power to control, alienate or dispose of the same during *the administration of his estate.*"

By virtue of the cession, the possession of the property ceded passes to the creditors to be administered and disposed of by the Syndic as administrator according to law. Jacquet vs. His Creditors, 38 La. An. 866.

Hence, the Court in the case of Tua vs. Carriere, 117 U. S. 208, applied to a Syndic acting under the insolvent law of Louisiana, "the general rule that when property is in the *possession of one Court for administration*, it is not liable to be seized by process from another."

The precise effect of a surrender under the insolvent law of Louisiana is stated with clearness by the Supreme Court of that State in Laforest vs. His Creditors, 18 La. An. 293: "Section 8 of the Act of 1855,

p. 432, declares that, after the cession and acceptance, all the property surrendered by an insolvent shall be fully vested in his creditors; and the syndic shall take possession of and be entitled to claim and recover all the property, and to administer and sell the same according to law; but the repealing clause of the Act retains what is in the Civil Code and Code of Practice, not contrary to its provisions; and according to the terms of the Civil Code, as well as the Statute of 1855, it seems clear that this tranfer is for specific purposes, to be sold according to law, and the proceeds distributed *in concurso* among the creditors. They cannot hold it in common, nor partition it in kind. The debtor or insolvent has a residuary interest, which may become fixed and availing in a certain contingency. Civil Code 2175; 2 Rob. 194."

It might as well be contended that when a man dies his property and rights are not transmitted to his heirs, as to maintain that property of every description is not transferred by a cession to the creditors of the insolvent.

In Elmes vs. Estevan, 1 Martin (O. S.) 193, the Court said: "When a debtor cedes his goods to his creditors and a stay of proceedings is granted, the cession operates the civil death of the debtor. His rights pass to other persons."

Not only the property omitted from the schedule is transferred to the creditors, but the syndic as their representative may sue to annul the transfer of any

property which the debtor has made to their prejudice prior to his cession. The syndic is in no manner committed to the correctness of the schedule, but as the Court say, like an assignee in bankruptcy, he may seek to amend or change it. Chaffe, Jr., Syndic, vs. Scheen and Husband, 34 La. An. 686.

Respectfully submitted,

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